Leading cases on the
Constitution of the U.S.

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on the CONSTITUTION *of the* UNITED STATES

Arranged for use in Government 1
at Harvard University

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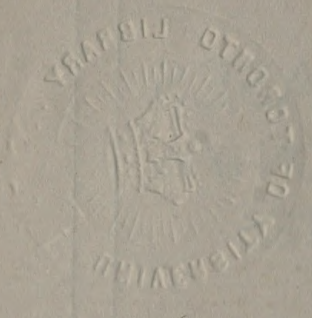

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LEADING CASES ON THE CONSTITUTION

INTRODUCTION

The Place of the Supreme Court in National Government.

THE framers of the American Constitution were convinced that the preservation of popular liberty demanded a fair division of powers among the three organs of government. "The accumulation of all powers, legislative, executive and judicial, in the same hands, whether of one, a few or many, and whether self-hereditary, self-appointed or elected" was regarded, in the words of Alexander Hamilton, as "the very definition of tyranny." No principle of government, it was believed, could call a greater range of political experience to its support. Hence it was the theory of those dominating the Constitutional Convention of 1787 that the Legislature should make the laws, that the Executive should put them into operation, and that the Judiciary should interpret them. These three organs of government were given as much independence of one another as seemed consistent with the smooth working of the whole governmental machine, and it was intended that no one of them should ever encroach upon the domain of the others. This doctrine had been given clear-cut expression by the statesmen who framed the Constitution of Massachusetts some few years before. "In the government of this commonwealth," declared that Constitution, "the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judiciary shall never exercise the legislative

and executive powers, or either of them; to the end it may be a government of laws and not of men." No political theory, therefore, had a firmer hold on the convictions of those whose handiwork is embodied in the federal and early state constitutions. It was farthest from their design that courts of justice, whether supreme or inferior, should ever make or amend in any particular the organic laws of the states or nation. Yet it is quite true, notwithstanding all this, that the Supreme Court of the United States has by its decisions on several notable occasions interpreted provisions of the federal Constitution in ways which virtually amended the express terms of the written document.

Expansion of the Constitution by Judicial Decision.

In no decision delivered by the Supreme Court during the hundred and twenty years of its existence has there ever been a definite avowal of intention to change any clause of the Constitution. The judges have always maintained that the sole functions of the judiciary are to interpret the Constitution and to apply its provisions, as so interpreted, to the facts before them. But with social and economic progress there have arisen new problems which those who framed the Constitution could not foresee. These new problems have from time to time demanded solution at the hands of the Supreme Court, and the judges have had to meet this demand by broadening the meaning of constitutional provisions. This policy seemed the only alternative to amending the Constitution by express changes in its phraseology, and this latter has been, during the past century, regarded as a very tedious undertaking.

The Work of Marshall.

During the first forty years after the Constitution went into operation many cases involving the extent of the federal government's powers came before the Supreme Court for decision. And throughout this period the Court, chiefly under the inspiration and guidance of Chief Justice John Marshall, proved ready to uphold the arm of the central government at every

opportunity. Marshall held the post of chief justice for thirty-four years (1801–1835), during all of which time he exercised a dominating influence upon the attitude of the Supreme Court in constitutional questions. Many of the tribunal's most notable decisions during three decades were written by him. As this was the age in which the new federal government needed all the strength it could acquire, the services of Marshall to the principles of centralization are not easily overestimated.

Chisholm *vs.* Georgia, 1793.

Prior to the appointment of Chief Justice Marshall only one important question involving the interpretation of a clause in the Constitution had come before the Supreme Court. This arose in the case of Chisholm *vs.* Georgia (1793).[1] By the terms of the Constitution the judicial power of the United States was extended to "all controversies between a State and citizens of another State";[2] and these words seemed to carry the implication that the federal courts might assume jurisdiction not only in suits brought by a state against citizens of another state but also in suits brought against a state by plaintiffs resident outside its own borders. But when a matter involving the construction of this clause arose through a suit brought against the state of Georgia a few years after the Constitution went into effect, the state authorities of Georgia protested loudly against this dragging of a sovereign commonwealth into a federal court as a defendant. Although the constitutional provision covering this matter had not expressly limited the Supreme Court's jurisdiction to cases in which the state was a plaintiff in suits against citizens of another state, it was urged that this, nevertheless, had been the intention of those who framed the clause. It was contended that although the several states were by the general tenor of the Constitution left in the enjoyment of sovereignty, a literal application of this particular provision would deprive them of one of the chief attributes of sovereignty.

[1] See *below*, pp. 71–73.

[2] Article III, section 2.

In its adjudication upon this question the Supreme Court supported the federal claim against the contention of Georgia. Although the judgment of the Court was delivered by John Jay, the Chief Justice, the reasons for the decision were formulated by Mr. Justice James Wilson, who had himself been one of the leading members of the Constitutional Convention in 1787. Wilson maintained, in brief, that since the various states had formed themselves into a single nation for national purposes, Georgia had relinquished her sovereignty so far as her relations to the Union were concerned. The attitude of the Court in this case gave strong support to the *national* theory of the Union as maintained by Alexander Hamilton, but the effect of the decision was soon nullified by the action of the states in proposing and adopting the Eleventh Amendment to the Constitution. This amendment, which went into effect in 1798, amounted virtually to the recall of a judicial decision.

The Doctrine of James Wilson.

The Decision Recalled, 1798.

The second leading case involving a constitutional dispute was that of Marbury *vs.* Madison (1803),[1] which engaged the attention of the Supreme Court shortly after Marshall became its Chief Justice. The fundamental issue in this controversy was whether Congress by passing a statute could confer upon the Court a power not given to that tribunal by the Constitution. In other words the case raised the all-important question whether the Supreme Court had been entrusted with the power to declare void any act of Congress which might be in conflict with the terms of the federal Constitution. In a masterly example of legal reasoning Marshall set forth what he conceived to be the true status of the Constitution as the supreme law of the land. No clause in the document could be brought forward as having expressly conferred upon the Supreme Court the power to declare an act of Congress unconstitutional. But that authority, Marshall argued, was derivable from the very

Marbury *vs.* Madison, 1803.

[1] See *below*, pp. 1–6.

nature of the Constitution. "The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary acts." To maintain the latter alternative would be to deny the supremacy which the Constitution in express words asserted for itself and which the people of the various states, in accepting the Constitution, awarded it.

Importance of this Decision and Discussions concerning it.

The stand taken by the Supreme Court in this case gave it a unique place among the great tribunals of the world, and this place it has maintained to the present day. No court in any other land has ever ventured to declare invalid an act passed in due form by the national legislature. Very naturally, then, this action of the Supreme Court of the United States has been the theme of much discussion both at home and abroad. For over a century writers on matters of jurisprudence have differed as to whether the Court was warranted in assuming this extraordinary jurisdiction, and even in our own day the controversy over this matter continues, although it has long since passed into the realm of purely academic discussion. Far more attention has been given to this matter than its practical importance deserves and for the most part the literary controversy has centered upon the question as to whether the framers of the Constitution ever intended to entrust such a portentous power to the judicial arm of the government. Much has been made of the fact that early in the proceedings of the convention a proposal was made to give a judicial body the power of passing upon the constitutionality of congressional statutes. This proposition was overwhelmingly defeated, and although it was three times revived, the proposal was on no occasion able to command support from more than three out of the twelve states represented in the convention. But an examination of the convention's records will disclose the fact that this proposition, which formed part of the so-termed Randolph Plan, had in view the creation of a special tribunal (not the

Supreme Court) made up of both executive officials and judges and that upon this special body it was intended to confer revisionary authority. It was to the creation of such an unprecedented, mixed tribunal of revision that strong opposition developed in the convention. The question whether the Supreme Court should of itself have this authority never came before the members of the convention at all.

The Intent of those who Framed the Constitution.

On the other side it has been established, either from their writings or from their subsequent attitude in the matter, that nearly a score at least among the members of the convention were in sympathy with the idea of having the Court exercise the authority which it assumed in Marbury *vs.* Madison. Among the leading figures of the convention, Alexander Hamilton, James Madison, Gouverneur Morris, James Wilson, Elbridge Gerry and others are on record in support of the stand later taken by the Court. Even Luther Martin of Maryland, who strongly opposed the proposal to create an executive-judicial body with revisionary powers because this would give the judges "a double negative," declared his opinion that the constitutionality of laws ought to come before the judges in their proper official capacity. It appears, accordingly, that the position taken by Marshall and the Court in this notable decision was not without warrant when approached from the extra-legal standpoint and regarded apart from the express terms of the Constitution.

McCulloch *vs.* Maryland, 1819.

Sixteen years after this decision came the case of McCulloch *vs.* Maryland (1819),[1] in which the Court not only reaffirmed its right to determine the constitutionality of laws, but by upholding the doctrine of "implied powers" greatly increased the scope of the federal government's authority. The Constitution gave Congress no express power to charter banks or to create corporations of any sort. On the contrary it was

[1] See *below*, pp. 43–51.

the opinion of James Madison (and Madison was the man who had most to do with the framing of these power-granting clauses) that the assumed authority of Congress to establish a bank was "condemned by the silence of the Constitution; was condemned by the rule of interpretation arising out of the Constitution . . . and was condemned by the apparent intentions of the parties which ratified the Constitution." Yet it could hardly be urged that the federal government must be held absolutely and without exception to the express terms of the Constitution. The grant of any power — such as that of laying taxes or borrowing money — was surely intended to carry with it the means of providing such administrative machinery as might be found necessary and proper for the exercise of that power. This intention appears clearly from the concluding paragraph of the Constitution's most important section.[1] It is manifestly impossible, in any constitutional document, to set forth every detail in specific terms or to make the language of each clause clear in its application to every situation that may arise in future years. The framers of the American Constitution labored under this limitation, hence what they intended to do can only be inferred from what they did.

But although it may be granted that Congress has implied authority to use all means necessary and proper for carrying its express powers into effect, there still arises the question whether, in determining if a certain proposed means is necessary and proper, the Court should assume a strict or a liberal attitude toward the federal government. This was the heart of the issue in McCulloch *vs.* Maryland. Marshall and his colleagues decided it in words which for clearness and force cannot be improved upon, when they declared that "any means adapted to the end, any means that tended directly to the execution of the constitutional powers of government, were in themselves constitutional." The Court ruled, in brief, that the implied powers of Con-

[1] See Article I, section 8.

gress were to be construed liberally, and hence that Congress should be allowed fair liberty in selecting the means best adapted to carrying its expressed powers into effect.

This being so, it follows logically that any administrative machinery selected by Congress for this purpose must not be clogged or thrown out of gear by state interference. The power to tax is the power to destroy, hence the power to tax any part of the federal machinery is the power to put it out of usefulness. If, therefore, in the exercise of its express powers to raise revenue and to borrow on the credit of the United States, Congress finds the establishment of a bank or a banking system to be a proper means to secure a constitutional end, no state may render such financial machinery ineffective by the exercise of its local taxing power. The decision in McCulloch *vs.* Maryland illustrates a real extension of federal powers by judicial interpretation.

Gibbons *vs.* Ogden, 1824.

One of the most vital clauses in the Constitution, although couched in the most general phraseology, is that which entrusts to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." [1] Out of this broad grant of power have grown the various attempts, so numerous during the last quarter-century, to regulate interstate commerce in all its branches. When the word "commerce" was incorporated in the Constitution, the clearness of its meaning was taken for granted. There was no discussion in the convention as to the scope of the economic operations properly comprised within the term. But "commerce" is a word which can be given either a broad or narrow interpretation. It may be used to include the whole field of trading activity, the instruments and mechanism of trade, transportation and communication, or it may be restricted to the mere operations of buying and selling. It was between those two constructions of the term that the Supreme Court was called upon to decide in Gibbons *vs.* Ogden.[2]

[1] Article I, section 8 (third paragraph).

[2] See *below*, pp. 51–56.

The decision in this case forms the starting-point in a long line of adjudications which have step by step augmented the constitutional power of Congress over interstate commerce until the exercise of this authority has become one of the greatest among federal functions. To-day the central control exercised in virtue of this authority extends not only to the transportation of merchandise, whether by water or rail, but to passenger traffic and to the transmission of intelligence by telegraph and telephone. Even with all this, moreover, the limits of the federal government's implied powers under this simple clause of the Constitution have not yet been reached.

The Constitution of the United States contains not only a statement of the things which the nation may do, but also of things which the states may not do. "No state shall pass any bill of attainder, *ex post facto* law or law impairing the obligations of contract" is one of these prohibitory provisions. The last clause of this provision is far from being self-explanatory and its application has brought a good deal of controversy before the Supreme Court.

Dartmouth College *vs.* Woodward, 1819.

One of the earliest, and perhaps the most famous among cases on this matter, is that of Dartmouth College *vs.* Woodward (1819).[1] While the case is of high intrinsic importance in that its decision determined a point of great interest, much of the prominence that it has had in American history results from the fact that it gave Daniel Webster the opportunity to make his first great constitutional argument. Webster, who was a graduate of Dartmouth, was at this time only thirty-six years old, but he made a masterful presentation of his case and the decision showed that Chief Justice Marshall entirely agreed with him. The chief point at issue was whether the charter of Dartmouth College was a contract, and, more broadly, whether all charters of private corporations ought to be included within the generic term "contracts" as used in the Constitution,

[1] See *below*, pp. 7–16.

or whether such charters were merely grants of power which might be recalled at will by the state which made them. The significance of the decision in this case is, therefore, that unless a state legislature in granting a charter to a private corporation has made a reservation of its right to amend or recall powers granted in it, any such interference constitutes an impairment of the obligations of a contract and is accordingly unconstitutional. It ought to be mentioned, however, that the decision in the Dartmouth College case has no bearing on the matter of rights acquired by public corporations (such as cities or towns) by the grant of charters to them. The charter of a city is not a contract; it is a grant of political power and may be revoked at will (Meriwether *vs.* Garret, 102 U. S. 472).

The doctrine maintained in the Dartmouth College case has never been explicitly reversed by the Supreme Court; it is still recognized and followed. But the influence of the decision has been considerably narrowed by the rules laid down in later cases, and by the action of the various states in making provision, either in their state constitutions or by statute, that all charters given to corporations shall be subject to legislative amendment or revocation. Charters obtained after the enactment of such general provisions are fully subject to impairment at the will of the legislature. Among later decisions which have weakened the practical force of the principle enunciated by the Supreme Court in the Dartmouth College case, a good example may be found in the case of The Proprietors of the Charles River Bridge *vs.* The Proprietors of the Warren Bridge (1837).[1] The issue here was not as to whether the charter of the plaintiffs was a contract and hence inviolable against impairment by statutory enactment, but whether the granting of a charter to the defendant company, with privileges antagonistic to the rights acquired by the plaintiffs, was in

Charles River Bridge *vs.* Warren Bridge, 1837.

[1] See *below*, pp. 17–27.

effect an impairment. Attention should be called to the dissenting opinion of Mr. Justice Story in this case and particularly to his argument on the matter of contractual covenants by implication.

Springer *vs.* United States, 1880.

By the provisions of the national Constitution large taxing powers are given to Congress. But upon the exercise of these powers there are some important limitations, prominent among which is the provision that "direct taxes shall be apportioned among the several States . . . according to their respective numbers." On the other hand, indirect taxes may be levied without any such apportionment. The distinction between direct and indirect taxes was not stated in the Constitution, however, and in due course it devolved upon the Supreme Court to determine whether certain forms of taxation came within one or other category. The issue was first raised in 1795 when the Supreme Court was called upon to decide whether a tax on pleasure carriages was a direct tax or not (Hylton *vs.* United States) and it was subsequently raised on several occasions when Congress levied taxes on the receipts of insurance companies, on bank notes, and on inheritances. During the Civil War Congress passed an income tax law, and in the case of Springer *vs.* United States (1880)[1] the Court was asked to decide whether an income tax was a direct tax and therefore uncollectible unless apportioned among the states according to their respective populations. The decision in this case was of no great practical importance, for the tax had been levied to meet the pressing financial necessities of the war period and it was abolished in 1872, when this need was over.

Pollock *vs.* Farmers' Loan and Trust Company, 1895.

But in 1894, during President Cleveland's second term, a downward revision of the tariff was accompanied by the re-introduction of an income tax which was to be levied upon all incomes above four thousand dollars, from whatever source derived.

[1] See *below*, pp. 28–33.

The constitutionality of this levy was attacked before the Supreme Court in the case of Pollock *vs.* The Farmers' Loan and Trust Company (1895),[1] on the ground that a tax on the income from real estate was a tax on the real estate itself and hence a direct tax which, to be allowable under the terms of the Constitution, must be apportioned among the states. The first decision in this case was unsatisfactory, the justices being equally divided in their conclusions upon some important points involved. Consequently the issues were re-argued, and by a decision of five justices against four all the important points in dispute were settled. The conclusions of the four dissenting justices in this case are of great academic importance and the whole controversy, indeed, serves to illustrate the extent to which a provision of the Constitution may be subjected to widely different interpretations.

Luther *vs.* Borden, 1848.

One of the purposes of the Constitution, as stated in its preamble, was to "secure the blessings of liberty to ourselves and our posterity." In consonance with this expressed purpose it was provided that the federal government should guarantee to every state in the Union a "republican" form of government and should protect every state on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence. But the Constitution did not go on to define the terms "republican form of government" nor did it make any provision for a contingency in which two different governments in the same state should each claim to be the only lawful one. Does the determination of such points lodge in Congress or in the courts? May the Supreme Court, within its constitutional jurisdiction, decree that a state government recognized by Congress as "republican" in form does not fulfil in reality the requirements of this term? These were the issues raised and decided in the case of Luther *vs.* Borden (1848).[2] Attention should be called, in reading the brief

[1] See *below*, 34–43.

[2] See *below*, pp. 56–60.

report of this case, to Chief Justice Taney's remarks on the securities against the abuse of political power and on the necessity of keeping the judiciary outside the arena of partisan controversy.

The Slaughter House Cases, 1873.

After the Civil War three amendments were made to the Constitution of the United States. One decreed the absolute and permanent abolition of slavery; the others endeavored to secure more firmly the rights of all citizens and to prevent discriminations between citizens under state laws. Shortly after the adoption of these amendments the Supreme Court was called upon, in the Slaughter House Cases (1873),[1] to determine how far these new constitutional guarantees operated to restrict the various states in the exercise of what has commonly been termed their "police power," in other words their right to take due measures for the preservation of the public health, safety and morals. Nearly every state law or city ordinance that is enacted as an exercise of the "police power" abridges to some extent the citizen's freedom of action; hence the question as to how far the states are free to go in this direction without encountering the constitutional prohibition "to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" or "deprive any person of life, liberty or property without due process of law," becomes one of great importance. That is why the decision in the Slaughter House Cases must be clearly understood by anyone who seeks to gain a proper grasp of the rights which accrue to all American citizens under the terms of the federal Constitution.

Kentucky vs. Dennison, 1860.

In accordance with their policy of vesting in the federal government only those powers which seemed necessary for the maintenance of the Union or which transcended the interests of a single state, the framers of the Constitution left to the several states of the Union full authority over a large part of the entire

[1] See *below*, pp. 61–73.

field of criminal law. Each state is therefore independent in its own field of criminal jurisdiction; the laws of each state have force only within its own limits; and crimes committed against the laws of one state cannot be punished in any other. Nor has any state the right to send its police officers into another state to arrest in a summary manner a fugitive from justice. But as it was anticipated that persons committing crimes in one state might escape across the borders into another state, provision was made in the Constitution for bringing such offenders back to trial. While the wording of this particular clause was made as clear as that of any other in the Constitution, many legal controversies have arisen over its interpretation, and some of the more important among these were passed upon by the Supreme Court in the case of Kentucky *vs.* Dennison (1860).[1] What offenses are extraditable and to what extent this interstate extradition clause of the Constitution can be enforced by one state upon another, are two of the questions raised and answered by the decision in this case.

Dred Scott *vs.* Sandford, 1857.

But of all the controversies that have come before the highest tribunal of the United States from its establishment to the present time, none has equaled the case of Dred Scott *vs.* Sandford (1857)[2] in the degree of public interest aroused. The stand taken by seven of the nine justices on the issue brought before the court in this controversy has commonly been regarded as one of the chief factors in forcing the whole question of slavery to an acute stage and thereby precipitating the war between the states. The issue turned chiefly upon the question whether a negro was a citizen within the meaning of that clause in the Constitution (Article III, section 1) which gave to the federal courts jurisdiction in all controversies "between citizens of different States." If a negro could not acquire the status of a citizen in any state or federal territory, then he was, in the eyes

[1] See *below*, pp. 73–80.

[2] See *below*, pp. 81–88.

of the law, a mere chattel. In such case he was subject to continued bondage by the rule which precluded Congress, even within federal territory, from depriving an owner of his property without "due process of law."[1] The decision in this case, given by Chief Justice Taney, created a storm of resentment in the Northern states of the Union. The dissenting opinion of Mr. Justice Curtis shows how widely the minority of the Supreme Court differed from the majority on this issue. After the Civil War the matter lost all but its historical significance, for the first clause of the Fourteenth Amendment was in effect a reversal of the Dred Scott decision.

. . . . . .

In studying the decisions contained in the following pages, it should be remembered that the facts in a case are of relatively little importance. They are given only as a necessary aid to a proper understanding of the decision. The things that a student ought to master are (1) the decision, (2) the reasons for the decision, and (3) the bearing of the decision upon the interpretation of some specific clause in the Constitution of the United States. This last point is the one that needs most emphasis, for every Supreme Court decision must go directly to some word, phrase or clause in the fundamental law of the nation. Where a dissenting opinion is given this should be sharply differentiated from the decision of the Court and the reasons for dissent on the part of one or more justices compared point by point with the reasons for the decision.

[1] Amendment V.

MARBURY *vs.* MADISON.

Supreme Court of the United States, (1803).

[*1 Cranch, 137.*]

Early in 1801, after Jefferson had been elected president, and just before John Adams' term expired, a number of United States judicial officers were appointed. Among them William Marbury was appointed a justice of the peace for the county of Washington. His commission was signed by the President, and sealed by the Secretary of State; but it was not delivered to Marbury before Mr. Adams' term of office expired; and then Mr. Madison, the new Secretary of State, refused to deliver it. Marbury thereupon brought a suit in the Supreme Court of the United States asking for a *mandamus*—that is, an order of court—directing Mr. Madison to deliver to him the commission. The court were of opinion that the appointment of Mr. Marbury was complete, and that he was entitled, therefore, to the commission. It was also of opinion that a writ of *mandamus* was the appropriate remedy. This left only the question whether the Supreme Court had jurisdiction to issue the writ. A statute authorized the court to issue such writs, but a doubt had been raised whether that statute was or was not in accord with the Constitution.

Chief Justice Marshall, in delivering the opinion of the court, said in part:

The act to establish the judicial courts of the United States authorizes the supreme court "to issue writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

The Secretary of State, being a person holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of *mandamus* to such an officer, it must be because the law is

unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign.

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. This power is expressly extended to all cases arising under the laws of the United States; and, consequently, in some form may be exercised over the present case; because the right claimed is given by a law of the United States.

In the distribution of this power it is declared that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other puplic ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction."

* * * * * * *

To enable this court, then, to issue a *mandamus*, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction.

* * * * * * *

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause.

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of *mandamus* to public officers, appears not to be warranted by the constitution; and it becomes necessary to inquire whether a jurisdiction so conferred can be exercised.

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole

American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the

fundamental principles of our society. It is not therefore to be lost sight of in the future consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any state." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the judges to close their eyes on the constitution, and only see the law?

The constitution declares "that no bill of attainder or *ex post facto* law shall be passed."

If, however, such a bill should be passed, and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare *one* witness, or a confession *out* of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it

is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of *courts*, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to *the constitution* and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the *supreme* law of the land, the *constitution* itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in *pursuance* of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that *courts*, as well as other departments, are bound by that instrument.

THE TRUSTEES OF DARTMOUTH COLLEGE

vs.

WOODWARD.

(*Commonly called the Dartmouth College Case.*)

SUPREME COURT OF THE UNITED STATES, (1819).

[*4 Wheaton, 518.*]

THE facts appear sufficiently in the opinion.

Chief Justice Marshall, in delivering the opinion of the court, said, in part;

This is an action of trover, brought by the Trustees of Dartmouth College against William H. Woodward, in the State Court of New Hampshire, for the book of records, corporate seal, and other corporate property, to which the plaintiffs allege themselves to be entitled.

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The title of the plaintiffs originates in a charter dated the 13th day of December, in the year 1769, incorporating twelve persons therein mentioned, by the name of "The Trustees of Dartmouth College," granting to them and their successors the usual corporate privileges and powers, and authorizing the trustees, who are to govern the college, to fill up all vacancies which may be created in their own body.

The defendant claims under three acts of the legislature of New Hampshire, the most material of which was passed on the 27th of June, 1816, and is entitled, "an act to amend the charter, and enlarge and improve the corporation of Dartmouth College." Among other alterations in the charter, this act increases the number of trustees to twenty-one, gives the appointment of the additional members to the executive of the State, and creates a board of overseers, with power to inspect and control the most important acts of the trustees. This board consists of twenty-five persons. The president of the senate, the speaker of the house of represent-

atives, of New Hampshire, and the governor and lieutenant governor of Vermont, for the time being, are to be members *ex officio*. The board is to be completed by the governor and council of New Hampshire, who are also empowered to fill all vacancies which may occur. The acts of the 18th and 26th of December are supplemental to that of the 27th of June, and are principally intended to carry that act into effect.

The majority of the trustees of the college have refused to accept this amended charter, and have brought this suit for the corporate property, which is in possession of a person holding by virtue of the acts which have been stated.

It can require no argument to prove, that the circumstances of this case constitute a contract. An application is made to the crown for a charter to incorporate a religious and literary institution. In the application, it is stated that large contributions have been made for the object, which will be conferred on the corporation, as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely in this transaction every ingredient of a complete and legitimate contract is to be found.

The points for consideration are,

1. Is this contract protected by the constitution of the United States?

2. Is it impaired by the acts under which the defendant holds?

1. On the first point it has been argued, that the word "contract", in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a State for State purposes, and to many of those laws concerning civil institutions, which must change with circumstances, and be modified by ordinary legislation; which deeply concern the public, and which, to preserve good government, the public judgment must control. That even marriage is a contract, and its obligations are affected by the laws respecting divorces. That the clause in the constitution, if construed in its greatest latitude, would prohibit these laws. Taken in its broad unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a State, would unnecessarily and unwisely embarrass its legislation, and render immuta-

ble those civil institutions, which are established for purposes of internal government, and which, to subserve those purposes, ought to vary with varying circumstances. That as the framers of the constitution could never have intended to insert in that instrument a provision so unnecessary, so mischievous, and so repugnant to its general spirit, the term "*contract*" must be understood in a more limited sense. That it must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt; and to restrain the legislature in future from violating the right to property. That anterior to the formation of the constitution, a course of legislation had prevailed in many, if not in all, of the States, which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, the State legislatures were forbidden "to pass any law impairing the obligation of contracts," that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that since the clause in the constitution must in construction receive some limitation, it may be confined, and ought to be confined, to cases of this description; to cases within the mischief it was intended to remedy.

The general correctness of these observations cannot be controverted. That the framers of the constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us, is not to be so construed, may be admitted. The provision of the constitution never has been understood to embrace other contracts, than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been broken by the other. When any state legislature shall pass an act annulling all marriage contracts, or allowing either party to annull it without the consent of the other, it will be time enough to inquire, whether such an act be constitutional.

The parties in this case differ less on general principles, less on the true construction of the constitution in the abstract, than on the application of those principles to this case, and on the true construction of the charter of 1769. This is the point on which the cause essentially depends. If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the State of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the state may act according to its own judgement, unrestrained by any limitation of its power imposed by the constitution of the United States.

But if this be a private eleemosynary institution, endowed with a capacity to take property for objects unconnected with government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves; there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they were made, should be parties to the cause. Those who are no longer interested in the property, may yet retain such an interest in the preservation of their own arrangements, as to have a right to insist, that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry, whether those whom they have legally empowered to represent them forever, may not assert all the rights which they possessed, while in being; whether, if they be without personal representatives who may feel injured by a violation of the compact, the trustees be not so completely their representatives in the eye of the law, as to stand in their place, not only as respects the government of the college, but also as respects the maintenance of the college charter.

It becomes then the duty of the court most seriously to examine this charter, and to ascertain its true character.

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From this review of the charter, it appears, that Dartmouth College is an eleemosynary institution, incorporated for the purpose

of perpetuating the application of the bounty of the donors, to the specified objects of that bounty; that its trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves; that they are not public officers, nor is it a civil institution, participating in the administration of government; but a charity school, or a seminary of education, incorporated for the preservation of its property, and the perpetual application of that property to the objects of its creation.

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According to the theory of the British constitution, their parliament is omnipotent. To annul corporate rights might give a shock to public opinion, which that government has chosen to avoid; but its power is not questioned. Had parliament, immediately after the emanation of this charter, and the execution of those conveyances which followed it, annulled the instrument, so that the living donors would have witnessed the disappointment of their hopes, the perfidy of the transaction would have been universally acknowledged. Yet then, as now, the donors would have had no interest in the property; then, as now, those who might be students would have had no rights to be violated; then, as now, it might be said, that the trustees, in whom the rights of all were combined, possessed no private, individual, beneficial interest in the property confided to their protection. Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769.

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The opinion of the court, after mature deliberation, is, that this is a contract, the obligation of which cannot be impaired, without violating the constitution of the United States. This opinion appears to us to be equally supported by reason, and by the former decisions of this court.

2. We next proceed to the inquiry, whether its obligation has been impaired by those acts of the legislature of New Hampshire, to which the special verdict refers.

From the review of this charter, which has been taken, it appears, that the whole power of governing the college, of appointing and removing tutors, of fixing their salaries, of directing the course of study to be pursued by the students, and of filling up vacancies created in their own body, was vested in the trustees. On the part of the crown it was expressly stipulated, that this corporation, thus constituted, should continue forever; and that the number of trustees should forever consist of twelve, and no more. By this contract the crown was bound, and could have made no violent alteration in its essential terms, without impairing its obligation.

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It has been already stated, that the act "to amend the charter, and enlarge and improve the corporation of Dartmouth College," increases the number of trustees to twenty-one, gives the appointment of the additional members to the executive of the State, and creates a board of overseers, to consist of twenty-five persons, of whom twenty-one are also appointed by the executive of New Hampshire, who have power to inspect and control the most important acts of the trustees.

On the effect of this law, two opinions cannot be entertained. Between acting directly, and acting through the agency of trustees and overseers, no essential difference is perceived. The whole power of governing the college is transferred from trustees appointed according to the will of the founder, expressed in the charter, to the executive of New Hampshire. The management and application of the funds of this eleemosynary institution, which are placed by the donors in the hands of trustees named in the charter, and empowered to perpetuate themselves, are placed by this act under the control of the government of the State. The will of the State is substituted for the will of the donors, in every essential operation of the college. This is not an immaterial change. The founders of the college contracted, not merely for the perpetual application of the funds which they gave, to the objects for which those funds were given; they contracted also, to secure that application by the constitution of the corporation. They contracted for a system, which should, as far as human fore-

sight can provide, retain forever the government of the literary institution they had formed, in the hands of persons approved by themselves. This system is totally changed. The charter of 1769 exists no longer. It is reorganized; and reorganized in such a manner, as to convert a literary institution, moulded according to the will of its founders, and placed under the control of private literary men, into a machine entirely subservient to the will of government. This may be for the advantage of this college in particular, and may be for the advantage of literature in general; but it is not according to the will of the donors, and is subversive of that contract, on the faith of which their property was given.

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It results from this opinion, that the acts of the legislature of New Hampshire, which are stated in the special verdict found in this cause, are repugnant to the constitution of the United States.

In the course of his opinion Judge Story said, in part;

There is yet another view of this part of the case, which deserves the most weighty consideration. The corporation was expressly created for the purpose of distributing in perpetuity the charitable donations of private benefactors. By the terms of the charter, the trustees, and their successors, in their corporate capacity, were to receive, hold, and exclusively manage, all the funds so contributed. The crown, then, upon the face of the charter, pledged its faith that the donations of private benefactors should be perpetually devoted to their original purposes, without any interference on its own part, and should be forever administered by the trustees of the corporation, unless its corporate franchises should be taken away by due process of law. From the very nature of the case, therefore, there was an implied contract on the part of the crown with every benefactor, that if he would give his money, it should be deemed a charity protected by the charter, and be administered by the corporation according to the general law of the land. As soon, then, as a donation was made to the corporation, there was an implied contract springing up, and founded on a valuable consideration, that the crown would not revoke, or alter the charter,

or change its administration, without the consent of the corporation. There was also an implied contract between the corporation itself, and every benefactor upon a like consideration, that it would administer his bounty according to the terms, and for the objects stipulated in the charter.

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Supposing, however, that in either of the views that have been suggested, the charter of Dartmouth College is to be deemed a contract, we are yet met with several objections of another nature.

It is, in the first place, contended, that it is not a contract within the prohibitory clause of the constitution, because that clause was never intended to apply to mere contracts of civil institution, such as the contract of marriage, or to grants of power to State officers, or to contracts relative to their offices, or to grants in trust to be exercised for purposes merely public, where the grantees take no beneficial interest.

It is admitted, that the State legislatures have power to enlarge, repeal, and limit the authorities of public officers in their official capacities, in all cases, where the constitutions of the States respectively do not prohibit them; and this, among others, for the very reason, that there is no express or implied contract, that they shall always, during their continuance in office, exercise such authorities. They are to exercise them only during the good pleasure of the legislature. But when the legislature makes a contract with a public officer, as in the case of a stipulated salary for his services, during a limited period, this, during the limited period, is just as much a contract, within the purview of the constitutional prohibition, as a like contract would be between two private citizens. Will it be contended, that the legislature of a state can diminish the salary of a judge holding his office during good behaviour? Such an authority has never yet been asserted to our knowledge. It may also be admitted, that corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended, that even in respect to such corporations, the legislative power is so transcendant, that it may at its will take away the private property of the corporation, or change

the uses of its private funds acquired under the public faith. Can the legislature confiscate to its own use the private funds which a municipal corporation holds under its charter, without any default or consent of the corporators? If a municipal corporation be capable of holding devises and legacies to charitable uses (as many municipal corporations are,) does the legislature, under our forms of limited government, possess the authority to seize upon those funds, and appropriate them to other uses, at its own arbitrary pleasure, against the will of the donors and donees? From the very nature of our governments, the public faith is pledged the other way; and that pledge constitutes a valid compact; and that compact is subject only to judicial inquiry, construction, and abrogation. This Court have already had occasion, in other causes, to express their opinion on this subject; and there is not the slightest inclination to retract it.

As to the case of the contract of marriage, which the argument supposes not to be within the reach of the prohibitory clause, because it is a matter of civil institution, I profess not to feel the weight of the reason assigned for the exception. . . . . A *general* law regulating divorces from the contract of marriage, like a law regulating remedies in other cases of breaches of contracts, is not necessarily a law impairing *the obligation of such a contract.* It may be the only effectual mode of enforcing the obligations of the contract on both sides. A law punishing a breach of a contract, by imposing a forfeiture of the rights acquired under it, or dissolving it because the mutual obligations were no longer observed, is in no correct sense a law impairing the obligations of the contract. Could a law, compelling a specific performance, by giving a new remedy, be justly deemed an excess of legislative power? Thus far the contract of marriage has been considered with reference to *general* laws regulating divorces upon breaches of that contract. But if the argument means to assert, that the legislative power to dissolve such a contract, without *any breach* on *either side*, *against the wishes of the parties*, and without any judicial inquiry to ascertain a breach, I certainly am not prepared to admit such a power, or that its exercise would not entrench upon the prohibition of the constitution. If under the faith of existing laws a contract of marriage be duly solemnized, or a mar-

riage settlement be made, (and marriage is always in law a valuable consideration for a contract,) it is not easy to perceive why a dissolution of its obligations, without any default or assent of the parties, may not as well fall within the prohibition, as any other contract for a valuable consideration. A man has just as good a right to his wife, as to *the property* acquired under a marriage contract. He has a legal right to her society and her fortune; and to devest such right without his default, and against his will, would be as flagrant a violation of the principles of justice, as the confiscation of his own estate. I leave this case however, to be settled, when it shall arise.

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In my judgment it is perfectly clear, that any act of a legislature which takes away any powers or franchises vested by its charter in a private corporation or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligations of that charter. If the legislature mean to claim such an authority, it must be reserved in the grant. The charter of Dartmouth College contains no such reservation; and I am, therefore, bound to declare, that the acts of the legislature of New Hampshire, now in question, do impair the obligations of that charter, and are, consequently, unconstitutional and void."

THE PROPRIETORS OF THE CHARLES RIVER BRIDGE

vs.

THE PROPRIETORS OF THE WARREN BRIDGE.

(*Commonly called the Charles River Bridge Case.*)

SUPREME COURT OF THE UNITED STATES, (1837)

[*11 Peters, 420.*]

THE facts appear sufficiently in the opinion.

Chief Justice TANEY, in delivering the opinion of the court, said, in part;

It appears, from the record, that in the year 1650, the Legislature of Massachusetts granted to the president of Harvard College "the liberty and power," to dispose of the ferry from Charlestown to Boston, by lease or otherwise, in behalf, and for the behoof of the college: and that, under that grant, the college continued to hold and keep the ferry by its lessees or agents, and to receive the profits of it until 1785. In the last mentioned year, a petition was presented to the legislature, by Thomas Russell and others, stating the inconvenience of the transportation by ferries, over Charles river, and the public advantages that would result from a bridge; and praying to be incorporated for the purpose of erecting a bridge in the place where the ferry between Boston and Charlestown was then kept. Pursuant to this petition, the legislature, on the 9th of March, 1785, passed an act incorporating a company, by the name of "The Proprietors of the Charles River Bridge," for the purposes mentioned in the petition. Under this charter the company were empowered to erect a bridge, in "the place where the ferry was then kept;" certain tolls were granted, and the charter was limited to forty years, from the first opening of the bridge for passengers; and from the time the toll commenced, until the expiration of this term, the company were to pay two hundred pounds, annually, to Harvard College; and, at the expiration of the forty years, the

bridge was to be the property of the commonwealth; "saving (as the law expresses it) to the said college or university, a reasonable annual compensation, for the annual income of the ferry, which they might have received had not the said bridge been erected."

The bridge was accordingly built, and was opened for passengers on the 17th of June, 1786. In 1792, the charter was extended to seventy years, from the opening of the bridge; and at the expiration of that time it was to belong to the commonwealth. The corporation have regularly paid to the college the annual sum of two hundred pounds, and have performed all of the duties imposed on them by the terms of their charter.

In 1828, the legislature of Massachusetts incorporated a company by the name of "The Proprietors of the Warren Bridge," for the purpose of erecting another bridge over Charles river. This bridge is only sixteen rods, at its commencement, on the Charlestown side, from the commencement of the bridge of the plaintiffs; and they are about fifty rods apart at their termination on the Boston side. The travellers who pass over either bridge, proceed from Charlestown square, which receives the travel of many great public roads leading from the country; and the passengers and travellers who go to and from Boston, used to pass over the Charles river bridge, from and through this square, before the erection of the Warren Bridge.

The Warren Bridge, by the terms of its charter, was to be surrendered to the state, as soon as the expenses of the proprietors in building and supporting it should be reimbursed; but this period was not, in any event, to exceed six years from the time the company commenced receiving toll.

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The cause came on for hearing in the supreme judicial court for the county of Suffolk, in the commonwealth of Massachusetts, at November term, 1829; and the court decided that the act incorporating the Warren bridge, did not impair the obligation of the contract with the proprietors of the Charles river bridge, and dismissed the complainants' bill: and the case is brought here by writ of error from that decision. It is, however, proper to state, that it is understood that the state court was equally divided upon

the question; and that the decree dismissing the bill upon the ground above stated, was pronounced by a majority of the court, for the purpose of enabling the complainants to bring the question for decision before this court.

In the argument here, it was admitted, that since the filing of the supplemental bill, a sufficient amount of toll had been received by the proprietors of the Warren bridge to reimburse all their expenses, and that the bridge is now the property of the state, and has been made a free bridge; and that the value of the franchise granted to the proprietors of the Charles river bridge, has by this means been entirely destroyed.

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The plaintiffs in error insist, ... that .... the acts of the legislature of Massachusetts of 1785, and 1792, by their true construction, necessarily implied that the legislature would not authorize another bridge, and especially a free one, by the side of this, and placed in the same line of travel, whereby the franchise granted to the "proprietors of the Charles river bridge" should be rendered of no value; and the plaintiffs in error contend, that the grant of the ferry to the college, and of the charter to the proprietors of the bridge, are both contracts on the part of the state; and that the law authorizing the erection of the Warren bridge in 1828, impairs the obligation of one or both of these contracts.

It is very clear, that in the form in which this case comes before us; being a writ of error to a state court; the plaintiffs in claiming under either of these rights, must place themselves on the ground of contract, and cannot support themselves upon the principle, that the law divests vested rights. It is well settled by the decisions of this court, that a state law may be retrospective in its character, and may divest vested rights; and yet not violate the constitution of the United States, unless it also impairs the obligation of a contract.

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In other words, they must show that the state had entered into a contract with them, or those under whom they claim, not to establish a free bridge at the place where the Warren bridge is erected.

Such, and such only, are the principles upon which the plaintiffs in error can claim relief in this case.

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As the proprietors of the bridge are neither the legal nor equitable assignees of the college, it is not easy to perceive how the ferry franchise can be invoked in aid of their claims, if it were even still a subsisting privilege; and had not been resumed by the state, for the purpose of building a bridge in its place.

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This brings us to the act of the legislature of Massachusetts, of 1785, by which the plaintiffs were incorporated by the name of "The Proprietors of the Charles River Bridge;" and it is here, and in the law of 1792, prolonging their charter, that we must look for the extent and nature of the franchise conferred upon the plaintiffs.

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This act of incorporation is in the usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation, for the purpose of building the bridge; and establishes certain rates of toll, which the company are authorized to take. This is the whole grant. There is no exclusive privilege given to them over the waters of Charles river, above or below their bridge. No right to erect another bridge themselves, nor to prevent other persons from erecting one. No engagement from the state, that another shall not be erected; and no undertaking not to sanction competition, nor to make improvements that may diminish the amount of its income. Upon all these subjects the charter is silent; and nothing is said in it about a line of travel, so much insisted on in the argument, in which they are to have exclusive privileges. No words are used, from which an intention to grant any of these rights can be inferred. If the plaintiff is entitled to them, it must be implied, simply, from the nature of the grant; and cannot be inferred, from the words by which the grant is made.

The relative position of the Warren bridge has already been

described. It does not interrupt the passage over the Charles river bridge, nor make the way to it or from it less convenient. None of the faculties or franchises granted to that corporation, have been revoked by the legislature; and its right to take the tolls granted by the charter remains unaltered. In short, all the franchises and rights of property enumerated in the charter, and there mentioned to have been granted to it, remain unimpaired. But its income is destroyed by the Warren bridge; which, being free, draws off the passengers and property which would have gone over it, and renders their franchise of no value. This is the gist of the complaint. For it is not pretended, that the erection of the Warren bridge would have done them any injury, or in any degree affected their right of property; if it had not diminished the amount of their tolls. In order then to entitle themselves to relief, it is necessary to show, that the legislature contracted not to do the act of which they complain; and that they impaired, or in other words, violated that contract by the erection of the Warren bridge.

The inquiry then is, does the charter contain such a contract on the part of the state? Is there any such stipulation to be found in that instrument? It must be admitted on all hands, that there is none — no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication; and cannot be found in the words used. Can such an agreement be implied? .... In charters of this description, no rights are taken from the public, or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied. ..... The whole community are interested in this inquiry, and they have a right to require that the power of promoting their comfort and convenience, and of advancing the public prosperity, by providing safe, convenient, and cheap ways for the transportation of produce, and the purposes of travel, shall not be construed to have been surrendered or diminished by the state; unless it shall appear by plain words, that it was intended to be done.

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And what would be the fruits of this doctrine of implied contracts on the part of the states, and of property in a line of travel by a corporation, if it should now be sanctioned by this court? To what results would it lead us? If it is to be found in the charter to this bridge, the same process of reasoning must discover it, in the various acts which have been passed, within the last forty years, for turnpike companies. And what is to be the extent of the privileges of exclusion on the different sides of the road? The counsel who have so ably argued this case, have not attempted to define it by any certain boundaries. How far must the new improvement be distant from the old one? How near may you approach without invading its rights in the privileged line? If this court should establish the principles now contended for, what is to become of the numerous railroads established on the same line of travel with turnpike companies; and which have rendered the franchises of the turnpike corporations of no value? Let it once be understood that such charters carry with them these implied contracts, and give this unknown and undefined property in a line of travelling; and you will soon find the old turnpike corporations awakening from their sleep, and calling upon this court to put down the improvements which have taken their place. The millions of property which have been invested in railroads and canals, upon lines of travel which had before been occupied by turnpike corporations, will be put in jeopardy. We shall be thrown back to the improvements of the last century, and obliged to stand still, until the claims of the old turnpike corporations shall be satisfied; and they shall consent to permit these states to avail themselves of the lights of modern science, and to partake of the benefit of those improvements which are now adding to the wealth and prosperity, and the convenience and comfort, of every other part of the civilized world. Nor is this all. This court will find itself compelled to fix, by some arbitrary rule, the width of this new kind of property in a line of travel; for if such a right of property exists, we have no lights to guide us in marking out its extent, unless, indeed, we resort to the old feudal grants, and to the exclusive rights of ferries, by prescription, between towns; and are prepared to decide

that when a turnpike road from one town to another, had been made, no rail road or canal, between these two points, could afterwards be established. This court are not prepared to sanction principles which must lead to such results.

Mr. Justice STORY, in the course of his dissenting opinion, said: We are to give this act of incorporation a rational and fair construction, according to the general rules which govern in all cases of the exposition of public statutes. We are to ascertain the legislative intent; and that once ascertained, it is our duty to give it a full and liberal operation.

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But it has been argued, and the argument has been pressed in every form which ingenuity could suggest, that if grants of this nature are to be construed liberally, as conferring any exclusive rights on the grantees, it will interpose an effectual barrier against all general improvements of the country. . . . . For my own part, I can conceive of no surer plan to arrest all public improvements, founded on private capital and enterprise, than to make the outlay of that capital uncertain, and questionable both as to security, and as to productiveness. No man will hazard his capital in any enterprise, in which, if there be a loss, it must be borne exclusively by himself; and if there be success, he has not the slightest security of enjoying the rewards of that success for a single moment. If the government means to invite its citizens to enlarge the public comforts and conveniences, to establish bridges, or turnpikes, or canals, or railroads, there must be some pledge, that the property will be safe; that the enjoyment will be co-extensive with the grant: and that success will not be the signal of a general combination to overthrow its rights, and to take away its profits. The very agitation of a question of this sort, is sufficient to alarm every stockholder in every public enterprise of this sort, throughout the whole country. Already, in my native state, the legislature has found it necessary expressly to concede the exclusive privilege here contended against; in order to insure the accomplishment of a railroad for the benefit of the public. And yet, we are told, that all such exclusive grants are to the detriment of the public.

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Now, I put it to the common sense of every man, whether if at the moment of granting the charter the legislature had said to the proprietors; you shall build the bridge; you shall bear the burthens; you shall be bound by the charges; and your sole reimbursement shall be from the tolls of forty years; and yet we will not even guaranty you any certainty of receiving any tolls. On the contrary we reserve to ourselves the full power and authority to erect other bridges, toll, or free bridges, according to our own free will and pleasure, contiguous to yours, and having the same termini with yours; and if you are successful we may thus supplant you, divide, destroy your profits, and annihilate your tolls, without annihilating your burthens; if, I say, such had been the language of the legislature, is there a man living of ordinary discretion or prudence, who would have accepted such a charter upon such terms? I fearlessly answer, no. There would have been such a gross inadequacy of consideration, and such a total insecurity of all the rights of property, under such circumstances, that the project would have dropped, still born. And I put the question farther, whether any legislature, meaning to promote a project of permanent public utility, (such as this confessedly was) would ever have dreamed of such a qualification of its own grant; when it sought to enlist private capital and private patronage to insure the accomplishment of it?

Yet, this is the very form and pressure of the present case. It is not an imaginary and extravagant case. Warren Bridge has been erected, under such a supposed reserved authority, in the immediate neighborhood of Charles River Bridge; and with the same termini, to accommodate the same line of travel. For a half dozen years it was to be a toll bridge for the benefit of the proprietors, to reimburse them for their expenditures. At the end of that period, the bridge is to become the property of the state, and free of toll; unless the legislature should hereafter impose one. In point of fact, it has since become, and now is, under the sanction of the act of incorporation, and other subsequent acts, a free bridge without the payment of any tolls for all persons. So that, in truth, here now is a free bridge, owned by and erected

under the authority of the commonwealth, which necessarily takes away all the tolls from Charles River Bridge; while its prolonged charter has twenty years to run. And yet the act of the legislature establishing Warren Bridge, is said to be no violation of the franchise granted to the Charles River Bridge. The legislature may annihilate, nay has annihilated by its own acts all chance of receiving tolls, by withdrawing the whole travel; though it is admitted that it cannot take away the barren right to gather tolls, if any should occur, when there is no travel to bring a dollar. According to the same course of argument, the legislature would have a perfect right to block up every avenue to the bridge, and to obstruct every highway which should lead to it, without any violation of the chartered rights of Charles River Bridge; and at the same time it might require every burthen to be punctiliously discharged by the proprietors, during the prolonged period of seventy years. I confess, that the very statement of such propositions is so startling to my mind, and so irreconcilable with all my notions of good faith, and of any fair interpretation of the legislative intentions, that I should always doubt the soundness of any reasoning which should conduct me to such results.

But it is said that there is no prohibitory covenant in the charter, and no implications are to be made of any such prohibition. .... The prohibition arises by natural, if not by necessary implication. It would be against the first principles of justice to presume that the legislature reserved a right to destroy its own grant. .... No principle is better established, than the principle that when a thing is given or granted, the law giveth, impliedly, whatever is necessary for the taking and enjoying the same. This is laid down in Co. Litt. 56, a; and is, indeed, the dictate of common sense applicable to all grants. Is not the unobstructed possession of the tolls, indispensable to the full enjoyment of the corporate rights granted to the proprietors of Charles river bridge? If the tolls were withdrawn, directly or indirectly, by the authority of the legislature, would not the franchise be utterly worthless? A burthen, and not a benefit? Would not the reservation of authority in the legislature to create a rival bridge, impair, if it did not absolutely destroy the exclusive right of the proprietors of Charles river bridge? I conceive it utterly impossible to give any other

than an affirmative answer to each of these questions. How, then, are we to escape from the conclusion, that that which would impair or destroy the grant, is prohibited by implication of law, from the nature of the grant?

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It is upon this ground, and this ground only, that we can explain the established doctrine in relation to ferries. When the crown grants a ferry from A. to B. without using any words which import it to be an exclusive ferry, why is it, (as will be presently shown) that by the common law the grant is construed to be exclusive of all other ferries between the same places, or termini; at least, if such ferries are so near that they are injurious to the first ferry, and tend to a direct diminution of its receipts? Plainly, it must be because from the nature of such a franchise it can have no permanent value, unless it is exclusive.

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But it is said, that if the doctrine contended for be not true, then every grant to a corporation becomes, ipso facto, a monopoly or exclusive privilege. The grant of a bank, or of an insurance company, or of a manufacturing company, becomes a monopoly; and excludes all injurious competition. With the greatest deference and respect for those who press such an argument, I cannot but express my surprise that it should be urged. As long ago as the case in the year book, 22 Hen. VI. 14; the difference was pointed out in argument between such grants as involve public duties and public matters for the common benefit of the people, and such as are for mere private benefit, involving no such consideration. If a bank, or insurance company, or manufacturing company, is established in any town by an act of incorporation; no one ever imagined that the corporation was bound to do business, to employ its capital, to manufacture goods, to make insurance. The privilege is a mere private corporate privilege for the benefit of the stockholders, to be used or not at their own pleasure; to operate when they please; and to stop when they please.

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To sum up, then, the whole argument on this head; I maintain, that, upon the principles of common reason and legal interpretation, the present grant carries with it a necessary implication that the legislature shall do no act to destroy or essentially to impair the franchise; that, (as one of the learned judges of the state court expressed it,) there is an implied agreement that the state will not grant another bridge between Boston and Charlestown, so near as to draw away the custom from the old one; and, (as another learned judge expressed it,) that there is an implied agreement of the state to grant the undisturbed use of the bridge and its tolls, so far as respects any acts of its own, or of any persons acting under its authority. In other words, the state, impliedly, contracts not to resume its grant, or to do any act to the prejudice or destruction of its grant.

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Upon the whole, my judgment is, that the act of the legislature of Massachusetts granting the charter of Warren bridge, is an act impairing the obligation of the prior contract and grant to the proprietors of Charles river bridge; and, by the constitution of the United States, it is, therefore, utterly void.

SPRINGER *vs.* UNITED STATES.

UNITED STATES SUPREME COURT, 1880.

[*102 U. S., 586.*]

UNDER acts of congress of July 1, 1862 and June 30, 1864, taxes, uniform throughout the United States, were laid upon income, and in accordance therewith Springer was assessed for his income, gains and profits of the year 1865. On his refusal to pay, a warrant was issued for the tax, and his real estate was sold to make payment. It was bought in by the United States, which brought an action of ejectment to obtain possession. The Circuit Court decided against Springer, and this appeal was brought to the Supreme Court of the United States.

In delivering the opinion of the court, Mr. Justice SWAYNE said, in part;

The central and controlling question in this case is whether the tax which was levied on the income, gains, and profits of the plaintiff in error, as set forth in the record, and by pretended virtue of the acts of Congress and parts of acts therein mentioned, is a direct tax.

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The clauses of the Constitution bearing on the subject are as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons..... No capitation or other direct tax shall be laid unless in proportion to the census hereinbefore directed to be taken."

Was the tax here in question a *direct* tax? If it was, not having been laid according to the requirements of the Constitution, it must be admitted that the laws imposing it, and the proceedings taken under them by the assessor and collector for its imposition and collection, were all void.

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In the twenty-first number of the Federalist, Alexander Hamilton, speaking of taxes generally, said: "Those of the *direct* kind, which principally relate to land and buildings, may admit of a rule of *apportionment*. Either the value of the land, or the number of the people, may serve as a standard." The thirty-sixth number of that work, by the same author, is devoted to the subject of internal taxes. It is there said, "They may be subdivided into those of the *direct* and those of the *indirect* kind." In this connection land-taxes and poll taxes are discussed. The former are commended and the latter are condemned. Nothing is said of any other direct tax. In neither case is there a definition given or attempted of the phrase "*direct tax*."

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Hamilton left behind him a series of legal briefs, and among them one entitled "Carriage tax." See Vol. VII, p. 848, of his works. This paper was evidently prepared with a view to the Hylton case, in which he appeared as one of the counsel for the United States. In it he says: "What is the distinction between *direct* and *indirect* taxes? It is a matter of regret that terms so uncertain and vague in so important a point are to be found in the Constitution. We shall seek in vain for any antecedent settled legal meaning to the respective terms. There is none. We shall be as much at a loss to find any disposition of either which can satisfactorily determine the point." There being many carriages in some of the States, and very few in others, he points out the preposterous consequences if such a tax be laid and collected on the principle of apportionment instead of the rule of uniformity. He insists that if the tax there in question was a direct tax, so would be a tax on ships, according to their tonnage. He suggests that the boundary line between direct and indirect taxes be settled by a "species of arbitration," and that direct taxes be held to be only "capitation or poll taxes, and taxes on lands and buildings, and general assessments, whether on the *whole property* of individuals or on their *whole* real or personal estate. All else must, of necessity, be considered as indirect taxes."

The tax here in question falls within neither of these categories.

It is not a tax on the "whole .... personal estate" of the individual, but only on his income, gains, and profits during a year, which may have been but a small part of his personal estate, and in most cases would have been so. This classification lends no support to the argument of the plaintiff in error.

The Constitution went into operation on the 4th of March, 1789. It is important to look into the legislation of Congress touching the subject since that time. The following summary will suffice for our purpose. We shall refer to the several acts of Congress, to be examined according to their sequence in dates. In all of them the aggregate amount required to be collected was apportioned among the several states.

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It will thus be seen that whenever the government has imposed a tax which it recognized as a *direct tax*, it has never been applied to any objects but real estate and slaves. The latter application may be accounted for upon two grounds: 1. In some of the states slaves were regarded as real estate (1 Hurd, Slavery, 239; *Veazie Bank v. Fenno*, 8 Wall. 533); and, 2, such an extension of the tax lessened the burden upon the real estate where slavery existed, while the result to the national treasury was the same, whether the slaves were omitted or included. The wishes of the South were, therefore, allowed to prevail. We are not aware that the question of the validity of such a tax was ever presented for adjudication. Slavery having passed away, it cannot hereafter arise. It does not appear that any tax like the one here in question was ever regarded or treated by Congress as a direct tax. This uniform practical construction of the Constitution touching so important a point, through so long a period, by the legislative and executive departments of the government, though not conclusive, is a consideration of great weight.

There are four adjudications by this court to be considered. They have an important, if not a conclusive, application to the case in hand. In *Hylton v. the United States* (*supra*), a tax had been laid upon pleasure-carriages. The plaintiff in error insisted that the tax was void, because it was a direct tax, and had not been apportioned among the States as required by the Constitution,

where such taxes are imposed. The case was argued on both sides by counsel of eminence and ability. It was heard and determined by four judges,— Wilson, Paterson, Chase, and Iredell. The three first named had been distinguished members of the constitutional convention. Wilson was on the committee that reported the completed draft of the instrument, and warmly advocated its adoption in the State convention of Pennsylvania. The fourth was a member of the convention of North Carolina that adopted the Constitution. The case was decided in 1795. The judges were unanimous. The tax was held not to be a *direct tax*. Each judge delivered a separate opinion. Their judgment was put on the ground indicated by Mr. Justice CHASE, in the following extract from his opinion: —

"It appears to me that a tax on carriages cannot be laid by the rule of *apportionment* without very great inequality and injustice. For example, suppose two States equal in census to pay eighty thousand dollars each by a tax on carriages of eight dollars on every carriage; and in one state there are one hundred carriages, and in the other one thousand. The owners of carriages in one state would pay ten times the tax of owners in the other. A., in one state, would pay for his carriage eight dollars; but B., in the other state, would pay for his carriage eighty dollars."

It was well held that where such evils would attend the apportionment of a tax, the Constitution could not have intended that an apportionment should be made. This view applies with even greater force to the tax in question in this case. Where the population is large and the incomes are few and small, it would be intolerably oppressive.

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Mr. Justice CHASE said further, "That he would give no judicial opinion upon the subject, but that he was inclined to think that the *direct taxes* contemplated by the Constitution were only two,— a capitation tax and a tax on land."

Mr. Justice IREDELL said: "Perhaps a direct tax, in the sense of the Constitution, can mean nothing but a tax on something inseparably annexed to the soil. .... A land or poll tax may be considered of this description. The latter is to be so considered,

particularly under the present Constitution, on account of the slaves in the Southern States, who give a ratio in the representation in the proportion of three to five."

Mr. Justice PATERSON said, he never entertained a doubt "that the principal, he would not say the *only*, objects contemplated by the Constitution as falling within the rule of apportionment, were a capitation tax and a tax on land." From these views the other judges expressed no dissent.

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In *Pacific Insurance Co. v. Soule* (7 Wall. 433), the taxes in question were upon the receipts of such (*i. e.* insurance) companies from premiums and assessments, and upon all sums made or added, during the year, to their surplus or contingent funds. This court held unanimously that the taxes were not *direct taxes*, and that they were valid.

In *Veazie Bank v. Fenno* (8 Wall. 533), the tax which came under consideration was one of ten per cent upon the notes of State banks paid out by other banks, State or National. The same conclusions were reached by the court as in the preceding case. Mr. Chief Justice CHASE delivered the opinion of the court. In the course of his elaborate examination of the subject he said, "It may be rightly affirmed that, in the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances and taxes on polls, or capitation taxes."

In *Scholey v. Rew* (23 Wall. 331), the tax involved was a succession tax, imposed by the acts of Congress of June 30, 1864, and July 13, 1866. It was held that the tax was not a *direct* tax, and that it was constitutional and valid. In delivering the opinion of the court, Mr. Justice CLIFFORD, after remarking that the tax there in question was not a direct tax, said: "Instead of that, it is plainly an excise tax or duty, authorized by sec. 1, art. 8, of the Constitution, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and public welfare."

He said further: "Taxes on houses, lands, and other permanent real estate have always been deemed to be direct taxes, and

capitation taxes, by the express words of the Constitution, are within the same category; but it has never been decided that any other legal exactions for the support of the Federal government fall within the condition that unless laid in proportion to numbers the assessment is invalid."

All these cases are undistinguishable in principle from the case now before us, and they are decisive against the plaintiff in error.

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Our conclusions are, that *direct taxes*, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complains is within the category of an excise or duty.

POLLOCK *vs.* THE FARMERS' LOAN & TRUST COMPANY.

SUPREME COURT OF THE UNITED STATES, (1895).

[*157 U. S. 429.*]

Joseph H. Choate, George F. Edmands and others for the appellants. *James C. Carter* and others for the defendants. *Richard Olney*, Attorney General for the United States.

BY an act of congress of August 15, 1894, it was provided, among other things, that "there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States." (Sec. 27.)

This suit was brought by Pollock as a stockholder of the Trust Company, to restrain it from paying the tax on the ground that the act was unconstitutional.

Chief Justice FULLER, in delivering the opinion of the court said, in part;

The contention of the complainant is: First. That the law in question, in imposing a tax on the income or rents of real estate, imposes a tax upon the real estate itself; and in imposing a tax on the interest or other income of bonds or other personal prop-

erty held for the purposes of income or ordinarily yielding income, imposes a tax upon the personal estate itself; that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated.

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The Constitution provides that representatives and direct taxes shall be apportioned among the several States according to numbers, and that no direct tax shall be laid except according to the enumeration provided for; and also that all duties, imposts and excises shall be uniform throughout the United States.

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Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises.

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Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words "duties, imposts and excises," such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue.

The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the Constitution. Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes. Nevertheless, it may be admitted that although this definition of direct taxes is *prima facie* correct, and to be applied in the consid-

eration of the question before us, yet that the Constitution may bear a different meaning, and that such different meaning must be recognized.

(Then follows a long description of the conditions under which the provision in the Constitution was adopted, and of the discussions upon it.)

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It is apparent: 1. That the distinction between direct and indirect taxation was well understood by the framers of the Constitution and those who adopted it. 2. That under the state systems of taxation all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes. 3. That the rules of apportionment and of uniformity were adopted in view of that distinction and those systems. 4. That whether the tax on carriages was direct or indirect was disputed, but the tax was sustained as a tax on the use and an excise. 5. That the original expectation was that the power of direct taxation would be exercised only in extraordinary exigencies, and down to August 15, 1894, this expectation has been realized. The act of that date was passed in a time of profound peace, and if we assume that no special exigency called for unusual legislation, and that resort to this mode of taxation is to become an ordinary and usual means of supply, that fact furnishes an additional reason for circumspection and care in disposing of the case.

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It is conceded . . . . that taxes on land are direct taxes.

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But is there any distinction between the real estate itself or its owners in respect of it and the rents or income of the real estate coming to the owners as the natural and ordinary incident of their ownership?

If the Constitution had provided that Congress should not levy any tax upon the real estate of any citizen of any State, could it be contended that Congress could put an annual tax for five or any other number of years upon the rent or income of the real estate?

And if, as the Constitution now reads, no unapportioned tax can be imposed upon real estate, can Congress without apportionment nevertheless impose taxes upon such real estate under the guise of an annual tax upon its rents or income?

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The requirement of the Constitution is that no direct tax shall be laid otherwise than by apportionment.... and it is admitted that a tax on real estate is a direct tax. Unless, therefore, a tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate *eo nomine*. The name of the tax is unimportant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income which is the incident of its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income. This law taxes the income received from land and the growth or produce of the land.

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Nothing can be clearer than that what the Constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any State through a majority made up from the other States. It is true that the effect of requiring direct taxes to be apportioned among the States in proportion to their population is necessarily that the amount of taxes on the individual taxpayer in a State having the taxable subject-matter to a larger extent in proportion to its population than another State has, would be less than in such other State, but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power of direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers.

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If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the Nation and the States of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property.

We are of opinion that the law in question, so far as it levies a tax on the rents or income of real estate, is in violation of the Constitution, and is invalid.

Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds.

The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers.

As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State.

A municipal corporation is the representative of the State and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation.

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It is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution.

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Mr. Justice WHITE, in the course of a dissenting opinion, on behalf of himself and Mr. Justice HARLAN, said:

The facts, then, are briefly these: At the very birth of the government a contention arose as to the meaning of the word "direct." The controversy was determined by the legislative and executive departments of the government. Their action came to this court for review, and it was approved. Every judge of this court who

expressed an opinion, made use of language which clearly showed that he thought the word "direct" in the Constitution applied only to capitation taxes and taxes directly on land. Thereafter the construction thus given was accepted everywhere as definitive. The matter came again and again to this court, and in every case the original ruling was adhered to. . . . . And now, after a hundred years, after long-continued action by other departments of the government, and after repeated adjudications of this court, this interpretation is overthrown, and the Congress is declared not to have a power of taxation which may at some time, as it has in the past, prove necessary to the very existence of the government. . . . . In view of all that has taken place and of the many decisions of this court, the matter at issue here ought to be regarded as closed forever.

Upon the questions whether the void provisions as to rents and income from real estate invalidated the whole act, and whether as to the income from personal property, as such, the act was unconstitutional as laying direct taxes, the court was evenly divided, and, therefore no opinion was expressed.

These questions were re-argued and decided, in

POLLOCK *vs.* THE FARMERS' LOAN & TRUST COMPANY.

SUPREME COURT OF THE UNITED STATES, (1895).

[*158 U. S. 601.*]

Chief Justice FULLER, in delivering the opinion of the court, said, in part;

Our previous decision was confined to the consideration of the validity of the tax on the income from real estate, and on the income from municipal bonds. . . . .

We are now permitted to broaden the field of inquiry, and to determine to which of the two great classes a tax upon a person's entire income, whether derived from rents, or products, or otherwise, of real estate, or from bonds, stocks, or other forms of personal property, belongs; and we are unable to conclude that the

enforced subtraction from the yield of all the owner's real or personal property, in the manner described, is so different from a tax upon the property itself, that it is not a direct, but an indirect tax, in the meaning of the Constitution.

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The Constitution prohibits any direct tax, unless in proportion to numbers as ascertained by the census; and .... is it not an evasion of that prohibition to hold that a general unapportioned tax, imposed upon all property owners as a body for or in respect of their property, is not direct, in the meaning of the Constitution, because confined to the income therefrom.

Whatever the speculative views of political economists or revenue reformers may be, can it be properly held that the Constitution, taken in its plain and obvious sense, and with due regard to the circumstances attending the formation of the government, authorizes a general unapportioned tax on the products of the farm and the rents of real estate, although imposed merely because of ownership and with no possible means of escape from payment, as belonging to a totally different class from that which includes the property from whence the income proceeds?

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Nor can we perceive any ground why the same reasoning does not apply to capital in personalty held for the purpose of income or ordinarily yielding income, and to the income therefrom.

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In the disposition of the inquiry whether a general unapportioned tax on the income of real and personal property can be sustained, under the Constitution, it is apparent that the suggestion that the result of compliance with the fundamental law would lead to the abandonment of that method of taxation altogether, because of inequalities alleged to necessarily accompany its pursuit, could not be allowed to influence the conclusion;

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We have considered the act only in respect of the tax on income derived from real estate, and from invested personal prop-

erty, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such.

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Justices HARLAN, BROWN, JACKSON and WHITE dissented.

Mr. Justice HARLAN said, in part;

In determining whether a tax on income from rents is a direct tax, within the meaning of the Constitution, the inquiry is not whether it may in some way indirectly affect the land or the land owner, but whether it is a *direct* tax *on the thing taxed, the land.* The circumstance that such a tax may possibly have the effect to diminish the value of the use of the land is neither decisive of the question nor important. While a tax *on the land* itself, whether at a fixed rate applicable to all lands without regard to their value, or by the acre or according to their market value, might be deemed a direct tax within the meaning of the Constitution as interpreted in the *Hylton case*, a duty on rents is a duty on something distinct and entirely separate from, although issuing out of, the land.

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In its practical operation this decision withdraws from national taxation not only all incomes derived from real estate, but tangible personal property, "*invested* personal property, bonds, stocks, investments of all kinds," and the income that may be derived from such property. This results from the fact that by the decision of the court, all such personal property and all incomes from real estate and personal property, are placed beyond national taxation otherwise than by *apportionment* among the States *on the basis* simply *of population.* No such apportionment can possibly be made without doing gross injustice to the many for the benefit of the favored few in particular States.

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We are told in argument that the burden of this income tax, if collected, will fall, and was imposed that it might fall, almost

entirely upon the people of a few States, and that it has been imposed by the votes of Senators and Representatives of States whose people will pay relatively a very small part of it. This suggestion, it is supposed, throws light upon the construction to be given to the Constitution, and constitutes a sufficient reason why this court should strike down the provision that Congress has made for an income tax. It is a suggestion that ought never to have been made in a court of justice.

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Mr. Justice JACKSON said:

It may reasonably and properly be assumed that the framers of the Constitution in adopting the rule of apportionment, according to the population of the several States, had reference to subjects or objects of taxation of universal or general distribution throughout all the States. A capitation of poll tax had its subject in every State, and was, so to speak, self-apportioning according to numbers. "Other direct tax" used in connection with such capitation tax must have been intended to refer to subjects having like, or approximate, relation to numbers, and found in all the States. It never was contemplated to reach by direct taxation subjects of partial distribution. What would be thought of a direct tax and the apportionment thereof laid upon cotton at so much a bale, upon tobacco at so much a hogshead, upon rice at so much a ton or a tierce? Would not the idea of apportioning that tax on property, non-existing in a majority of the States, be utterly frivolous and absurd?

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If the assumption I have made that the framers of the Constitution in providing for the apportionment of a direct tax had in mind a subject-matter or subjects-matter, which had some general distribution among the States is correct, it is clear that a tax on incomes — a subject not of general distribution at that time or since — is not a "direct tax" in the sense of the Constitution.

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Again, we cannot attribute to the framers of the Constitution an intention to make any tax a direct tax which it was impossible

to apportion. If it cannot be apportioned without gross injustice, we may feel assured that it is a tax never contemplated by the Constitution as a direct tax.

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By way of further illustration, take the new State of Washington and the old State of Rhode Island, having about the same population. To each would be assigned the same amount of the general assessment. In the former, we will say, there are 5000 citizens subject to the operation of the law, in the latter 50,000. The citizens of Washington will be required to pay ten times as much as the citizens of Rhode Island on the *same amount* of taxable income..... To say that the Constitution, which was intended to promote peace and justice, either in its whole or in any part thereof, ever intended to work out such a result, and produce such gross discrimination and injustice between the citizens of a common country, is beyond all reason.

McCULLOCH *vs.* THE STATE OF MARYLAND ET AL.

SUPREME COURT OF THE UNITED STATES, (1819).

[*4 Wheat., 316.*]

THIS was an action of debt, brought by the defendant in error, John James, who sued as well for himself as for the State of Maryland, in the County Court of Baltimore County in the said State against the plaintiff in error, McCulloch, to recover certain penalties under the Act of the Legislature of Maryland, hereafter mentioned. Judgment being rendered against the plaintiff in error, upon the following statement of facts agreed and submitted to the court by the parties, was affirmed by the Court of Appeals of the State of Maryland, the highest court of law of said State, and the case was brought by writ of error to this court.

The following facts were agreed:

That in April, 1816, Congress incorporated the Bank of the United States, which bank in 1817 established a branch at Baltimore,

Maryland. That in 1818 the Maryland Legislature passed an Act to tax "all banks or branches thereof in the State of Maryland, not chartered by the legislature," by prohibiting them from issuing any notes except upon certain stamped paper. That McCulloch, the cashier of the bank at Baltimore, in defiance of the law, had uttered notes upon unstamped paper.

Webster and Pinckney for the plaintiff in error.

Hopkinson, Jones, and Martin for the defendant.

The Attorney-General was also heard for the plaintiff, by reason of the interest of the United States.

Marshall, C.J., delivered the opinion of the Court.

In the case now to be determined the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union; and the plaintiff, on his part, contests the validity of an Act which has been passed by the legislature of that State.

The first question made in the cause is, has congress power to incorporate a bank?

The government of the Union . . . . is emphatically and truly a government of the people. In force and substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was pending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise as long as our system shall exist.

In discussing these questions, the conflicting powers of the general and State governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this: That the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all and acts for all. Though any

one State may be willing to control its operations, no State is willing to allow others to control them. The nation on those subjects on which it can act must necessarily bind its component parts. But this question is not left to mere reason; the people have in express terms decided it by saying, "this Constitution and the laws of the United States, which shall be made in pursuance thereof shall be the supreme law of the land," and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it.

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding."

Among the enumerated powers we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of Confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the Tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly," and declares only that the powers "not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;" thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the Articles of Confederation, and probably omitted it to avoid those embarassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the

nature of the objects themselves. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations found in the ninth section of the first article introduced? It is also in some degree warranted by their omitting to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget that it is a constitution we are expounding.

Although among the enumerated powers of government we do not find the word "bank" or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced But it may with great reason be contended that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution. It can never be their interest, and cannot be persumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast Republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If indeed such be the mandate of the Constitution, we have only to obey; but that instrument

does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry how far such means may be employed.

It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue and applying it to national purposes is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. But it is denied that the government has its choice of means; or that it may employ the most convenient means, if, to employ them, it be necessary to erect a corporation.

. . . . . The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is, therefore, perceived why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them.

But the Constitution of the United States has not left to general reasoning the right of Congress to employ the necessary means for the execution of the powers conferred upon the government. To its enumeration of powers is added that of making "all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution the government of the United States or in any department thereof."

The counsel for the State of Maryland have urged various arguments to prove that this clause, though in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated powers.

In support of this proposition they have found it necessary to contend that this clause was inserted for the purpose of conferring on Congress the power of making laws. That, without it, doubts might be entertained whether Congress could exercise its powers in the form of legislation.

But could this have been the object for which it was inserted? . . . . . That a legislature, endowed with legislative powers, can legislate, is a proposition too self-evident to have been questioned.

But the argument on which most reliance is placed is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws which may have relation to the powers conferred on the government, but such only as may be "necessary and proper" for carrying them into execution. The word "necessary" is considered as controlling the whole sentence and as limiting the right to pass laws for the execution of the granted powers to such as are indispensable and without which the power would be nugatory. That it excludes the choice of means and leaves to Congress in each case that only which is most direct and simple.

Is it true that this is the sense in which the word "necessary" is always used? Does it always import an absolute physical necessity, so strong that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. . . . . This word, then, like others, is used in various senses; and in its construction the subject, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate and which were condusive to the end. . . . . .

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland is founded on the intention of the convention as manifested in the whole clause. To waste time and argument in proving that, without it, Congress might carry its powers into execution would not be much less idle than to hold a lighted taper to the sun. As little can it be required to prove that in the absence of this clause Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means that tended directly to the execution of the constitutional powers of the government, were in themselves

constitutional. This clause, as construed by the State of Maryland, would abridge and almost annihilate this useful and necessary right of the legislature to select its means. That this could not be intended is, we should think, had it not been already controverted, too apparent for controversy. We think so for the following reasons:

1. The clause is placed among the powers of Congress, not among the limitations on these powers.

2. Its terms purport to enlarge, not to diminish the powers vested in the government. . . . . .

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations is not now a subject of controversy. . . . . .

After the most deliberate consideration, it is the unanimous and decided opinion of this court that the Act to incorporate the Bank of the United States is a law made in pursuance of the Constitution and is a part of the supreme law of the land. . . . . .

It being the opinion of the Court that the Act incorporating the bank is constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire:

1. Whether the State of Maryland may, without violating the Constitution, tax that branch?

That the power of taxation is one of vital importance; that it is retained by the States; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments are truths which have never been denied. But, such is the paramount character of the Constitution, that its capacity to withdraw any subject from the action of even this power is admitted. The States are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws. If the obligation of this prohibition must be conceded — if it may restrain

a State from the exercise of its taxing power on imports and exports; the same paramount character would seem to restrain, as it certainly may restrain, a State from such other exercise of this power, as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. A law absolutely repugnant to another as absolutely repeals that other as if express terms of repeal were used.

The great principle is, that the Constitution and the laws made in pursuance thereof are supreme; that they control the Constitution and laws of the respective States and cannot be controlled by them. From this, which may almost be termed an axiom, other propositions are deduced as corollaries, on the truth and error of which, and on their application to this case, the cause has been supposed to depend. These are: 1. That a power to create implies a power to preserve. 2. That a power to destroy if wielded by a different hand, is hostile to, and incompatible with, these powers to create and preserve. 3. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . . . .

The power of Congress to create, and of course to continue, the bank was the subject of the preceding part of this opinion; and is no longer to be considered as questionable. . . . . .

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. . . . . .

If we apply the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government and of prostrating it at the foot of the States. The American people have declared their Constitution and the laws made in pursuance thereof to be supreme; but this principle would transfer the supremacy, in fact, to the States. . . . . .

The court has bestowed on this subject its most deliberate con-

sideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.

We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

GIBBONS *vs.* OGDEN

SUPREME COURT OF THE UNITED STATES, (1824).

[*9 Wheat., 1*]

ERROR to the court for the trial of impeachments and correction of errors of the State of New York. Aaron Ogden filed his bill in the Court of Chancery of that State against Thomas Gibbons, setting forth the several Acts of the Legislature thereof enacted for the purpose of securing to Robert R. Livingston and Robert Fulton the exclusive navigation of all the waters within the jurisdiction of that State with boats moved by fire or steam for a term of years which had not yet expired; and authorizing the Chancellor to award an injunction restraining any person whatever from navigating those waters with boats of that description. The bill stated an assignment from Livingston and Fulton to one John R. Livingston, and from him to the complainant, Ogden, of the right to navigate the waters between Elizabethtown, and other places in New Jersey, and the City of New York; and that Gibbons, the defendant below, was in possession of two steamboats, called the "Stoudinger" and the "Bellona", which were actually employed in running between New York and Elizabethtown in violation of the exclusive privilege conferred on the complainant, and praying an injunction to restrain the said Gibbons from using the said boats, or any other propelled by fire or steam, in navigating the waters within the

territory of New York. The injunction having been awarded, the answer of Gibbons was filed, in which he stated that the boats employed by him were duly enrolled and licensed to be employed in carrying on the coasting trade, under the Act of Congress passed the 18th of February, 1793, Ch. 8, entitled "An Act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries, and for regulating the same." And the defendant insisted on his right, in virtue of such licenses, to navigate the waters between Elizabethtown and the City of New York, the said Acts of the Legislature of the State of New York to the contrary notwithstanding. At the hearing the Chancellor perpetuated the injunction, being of the opinion that the said acts were not repugnant to the Constitution and laws of the United States and were valid. This decree was affirmed in the court for the trial of impeachments and correction of errors, which is the highest court of law and equity in the State before which the cause could be carried, and it was thereupon brought to this court by writ of error.

Webster and Wirt (Attorney General) for the plaintiff. Oakley and Emmett for the defendant. . . . . .

Marshall, C.J., delivered the opinion of the court:

The appellant contends that this decree is erroneous because the laws which purport to give the exclusive privilege it sustains are repugnant to the Constitution and laws of the United States.

They are said to be repugnant, 1. To that clause in the Constitution which authorizes Congress to regulate commerce. 2. To that which authorizes Congress to promote the progress of science and useful arts. . . . . .

The words are: "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more—it is intercourse.

It describes the commercial intercourse between nations and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling or of barter. . . . . .

The word used in the Constitution, then, comprehends and has always been understood to comprehend navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word "commerce."

To what commerce does this power extend? The Constitution informs us, to commerce "with foreign nations, and among the several States, and with the Indian tribes." It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence and remain a unit, unless there be some plain intelligible cause which alters it.

The subject to which the power is next applied is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary-line of each State, but may be introduced into the interior. . . . . .

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more States than one. . . . The completely internal commerce of a State, then, may be considered as reserved for the State itself.

. . . . . What is commerce "among" them? And how is it to be conducted? Can a trading expedition between two adjoining

States commence and terminate outside of each? And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the States must of necessity be commerce with the States. . . . The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several States. . . . . .

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These are expressed in plain terms and do not affect the questions which arise in this case. . . . . .

The power of Congress, then, comprehends navigation within the limits of every State in the Union, so far as that navigation may be in any manner connected with "commerce with foreign nations, or among the several States, or with the Indian tribes." It may of consequence pass the jurisdictional line of New York, and act upon the very waters to which the prohibition now under consideration applies.

But it has been urged with great earnestness that, although the power of Congress to regulate commerce with foreign nations, and among the several States, be co-extensive with the subject itself, and have no other limits than are prescribed in the Constitution, yet the States may severally exercise the same power within their respective jurisdictions. In support of this argument it is said that they possessed it as an inseparable attribute of sovereignty before the formation of the Constitution, and still retain it, except so far as they have surrendered it by that instrument; that this principle results from the nature of the government, and is secured by the Tenth Amendment; that an affirmative grant of power is not exclusive, unless in its own nature it be such that the continued exercise of it by the former possessor is inconsistent with the grant, and that this is not of that description.

The appellant, conceding these postulates, except the last, contends that full power to regulate a particular subject implies the whole power and leaves no *residuum;* that a grant of the

whole is incompatible with the existence of a right in another to any part of it.

. . . . The sole question is, can a State regulate commerce with foreign nations and among the States while Congress is regulating it? . . . . . .

These acts were cited at the bar for the purpose of showing an opinion in Congress that the States possess, concurrently with the legislature of the Union, the power to regulate commerce with foreign nations and among the States. Upon reviewing them, we think they do not establish the proposition they were intended to prove. They show the opinion that the States retain powers enabling them to pass the laws to which allusion has been made, not that those laws proceed from the particular power which has been delegated to Congress.

It has been contended by the counsel for the appellant that, as the word to "regulate" implies in its nature full power over the thing to be regulated, it excludes necessarily the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated.

There is great force in this argument and the court is not satisfied that it has been refuted.

Since, however, in exercising the power of regulating their own purely internal affairs, whether of trading or police, the States may sometimes exact laws, the validity of which depends on their interfering with and being contrary to an Act of Congress, passed in pursuance of the Constitution, the court will enter upon the inquiry whether the laws of New York, as expounded by the highest tribunal of that State, have in their application to this case come into collision with an Act of Congress and deprived a citizen of a right to which that Act entitles him. . . . . .

The questions, then, whether the conveyance of passengers be a part of the coasting trade, and whether a vessel can be protected in that occupation by a coasting license, are not and cannot be raised in this case. The real and sole question seems to be whether a

steam machine, in actual use, deprives a vessel of the privileges conferred by a license.

In considering this question, the first idea which presents itself is that the laws of Congress for the regulation of commerce do not look to the principle by which vessels are moved. . . . .

But all inquiry into this subject seems to the court to be put completely at rest by the act already mentioned, entitled, "An Act for the enrolling and licensing of steamboats." . . . .

This Act demonstrates the opinion of Congress that steamboats may be enrolled and licensed in common with vessels using sails. They are, of course, entitled to the same privileges, and can no more be restrained from navigating waters and entering ports which are free to such vessels, than if they were wafted on their voyage by the winds, instead of being propelled by the agency of fire. The one element may be as legitimately used as the other for every commercial purpose authorized by the laws of the Union; and the Act of a State inhibiting the use of either to any vessel having a license under the Act of Congress comes, we think, in direct collision with that act.

As this decides the cause, it is unnecessary to enter in an examination of that part of the Constitution which empowers Congress to promote the progress of science and the useful arts. . . . .

LUTHER *vs.* BORDEN

Supreme Court of the United States, (1848).

[*7 How., 1; 17 Curtis, 1.*]

After entering the Union, Rhode Island still continued to be governed by her royal charter originally granted by Charles II., which restricted the right of suffrage to freeholders and the eldest sons of freeholders. Agitation to broaden the basis of the government being fruitless, in 1841 a revolutionary committee undertook to establish a new constitution regardless of legal forms. The result was that in 1842 two governments were attempting to control

the State; one the old government under the royal charter, the other a new government illegally accepted by a majority of the people in the State. The free-suffrage party seemed on the point of striking for the supremacy by an armed insurrection when President Tyler, in an appeal from Governor King, took steps to support the charter government against the threatened danger. The result of this decided action on the part of the federal executive broke up the opposition and allowed the needed reform to be accomplished the next year in a peaceable and lawful way.

Martial law having been declared by the legislature of the charter government during the trouble, a body of militia broke into the house of one Martin Luther in order to accomplish his arrest, according to commands received from their superior officer. Luther thereupon brought an action of trespass against Luther M. Borden and others, who had made the forcible entry into his house. As the case involved the question which of the two was the legal government of Rhode Island, it came at length for final decision to the Supreme Court of the United States.

Hallett and Clifford for the plaintiff. Webster and Whipple *contra.*

Taney, C. J., delivered the opinion of the court.

The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion; and on the application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence.

Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantees to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that

the contest in this case did not last long enough to bring the matter to this issue; and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.

So, too, as relates to the clause in the above mentioned article of the Constitution providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. They might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide when the contingency had happened which required the federal government to interfere. But Congress thought otherwise, and no doubt wisely; and by the Act of February 28, 1795, provided that, "in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State or of the executive, when the legislature cannot be convened, to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection."

By this Act, the power of deciding whether the exigency had arisen, upon which the government of the United States is bound to interfere, is given to the President. He is to act upon the application of the legislature, or of the executive, and consequently he must determine what body of men constitute the legislature, and who is the Governor, before he can act. The fact that both parties claim the right to be the government cannot alter the case, for both cannot be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must of necessity decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the Act of Congress.

After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right? Could the court, while the parties were actually contending in arms for the possession of the government,

call witnesses before it, and inquire which party represented a majority of the people? If it could, then it would become the duty of the court (provided it came to the conclusion that the President had decided incorrectly) to discharge those who were arrested or detained by the troops in the service of the United States, or the government which the President was endeavoring to maintain. If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy and not of order. Yet if this right does not reside in the courts when the conflict is raging — if the judicial power is, at that time, bound to follow the decision of the political, it must be equally bound when the contest is over. It cannot, when peace is restored, punish as offences and crimes the acts which it before recognized, and was bound to recognize as lawful.

It is true that in this case the militia was not called out by the President. But upon application of the Governor under the charter government, the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority, if it should be found necessary for the general government to interfere; and it is admitted in the argument that it was the knowledge of this decision that put an end to the armed opposition to the charter government and prevented any further efforts to establish by force the proposed Constitution. The interference of the President, therefore, by announcing his determination, was as effectual as if the militia had been assembled under his orders. And it should be equally authoritative. For certainly no court of the United States, with a knowledge of his decision would have been justified in recognizing the opposing party as the lawful government, or in treating as wrong-doers or insurgents the officers of the government which the President had recognized, and was prepared to support with an armed force. In the case of foreign nations the government acknowledged by the President is always recognized in the courts of justice. And this principle has been applied by the Act of Congress to the sovereign States of the Union.

It is said that this power in the President is dangerous to liberty, and may be abused. All power may be abused if placed in unworthy hands. But it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the

same time equally effectual. When citizens of the same State are in arms against each other, and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt, or it is of little value. The ordinary course of proceedings in courts of justice would be utterly unfit for the crisis. And the elevated office of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a wilful abuse of power as human prudence and foresight could well provide. At all events, it is conferred upon him by the Constitution and laws of the United States, and must, therefore, be respected and enforced in its judicial tribunals.

. . . . Undoubtedly, if the President, in exercising this power, shall fall into error or invade the rights of the people of the State, it would be in the power of Congress to apply the proper remedy. But the court must administer the law as they find it. . . . .

Much of the argument on the part of the plaintiff turned upon political rights and political questions, upon which the court has been urged to express an opinion. We decline doing so. The high power has been conferred on this court of passing judgment upon the acts of the State sovereignties, and of the legislative and executive branches of the federal government, and determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums. No one, we believe, has ever doubted the proposition that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that they may alter and change their form of government at their own pleasure. But whether they have changed it or not, by abolishing an old government, and establishing a new one in its place, is a question to be settled by the political power. And when that power has decided, the courts are bound to take notice of its decision, and to follow it.

The judgment of the Circuit Court must, therefore, be affirmed.

SLAUGHTER-HOUSE CASES

SUPREME COURT OF THE UNITED STATES, (1873).

[*16 Wall., 36.*]

THE facts appear in the opinion of the court, delivered by Mr. Justice Miller, in part as follows:

These cases are brought here by writs of error to the Supreme Court of the State of Louisiana. They arise out of the efforts of the butchers of New Orleans to resist the Crescent City Live-Stock Landing and Slaughter-House Company in the exercise of certain powers conferred by the charter which created it, and which was granted by the legislature of that State. . . . .

The records show that the plaintiffs in error relied upon, and asserted throughout the entire course of the litigation in the State courts, that the grant of privileges in the charter of defendant, which they were contesting, was a violation of the most important provisions of the thirteenth and fourteenth articles of amendment of the Constitution of the United States. The jurisdiction and duty of this court to review the judgment of the State court on those questions is clear and imperative.

The statute thus assailed as unconstitutional was passed March 8, 1869, and is entitled "An Act to protect the health of the City of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate the Crescent City Live-Stock Landing and Slaughter-House Company."

The first section forbids the landing or slaughtering of animals, whose flesh is intended for food, within the City of New Orleans and other parishes and boundaries named and defined, or the keeping or establishing of any slaughter-houses or abattoirs within those limits, except by the corporation thereby created, which is also limited to certain places afterwards mentioned. Suitable penalties are enacted for violations of this prohibition.

The second section designates the corporators, gives the name to the corporation, and confers on it the usual corporate powers.

The third and fourth sections authorize the company to establish and erect, within certain territorial limits therein defined, one or more stock-yards, stock-landings, and slaughter-houses, and impose upon it the duty of erecting, on or before the first day of June, 1869, one grand slaughter-house of sufficient capacity for slaughtering five hundred animals per day.

It declares that the company, after it shall have prepared all the necessary buildings, yards, and other conveniences for that purpose, shall have the sole and exclusive privilege of conducting and carrying on the live-stock landing and slaughter-house business within the limits and privilege granted by the Act, and that all such animals shall be landed at the stock-landings and slaughtered at the slaughter-houses of the company, and nowhere else. Penalties are enacted for infractions of this provision, and prices fixed for the maximum charges of the company for each steam-boat and for each animal landed.

Section five orders the closing up of all other stock-landings and slaughter-houses after the first day of June, in the parishes of Orleans, Jefferson, and St. Bernard, and makes it the duty of the company to permit any person to slaughter animals in their slaughter-houses under a heavy penalty for each refusal. Another section fixes a limit to the charges to be made by the company for each animal so slaughtered in their building, and another provides for the inspection of all animals intended to be so slaughtered, by an officer appointed by the Governor of the State for that purpose.

These are the principal features of the statute, and are all that have any bearing upon the questions to be decided by us.

This statute is denounced not only as creating a monopoly and conferring odious and exclusive privileges upon a small number of persons at the expense of the great body of the community of New Orleans, but it is asserted that it deprives a large and meritorious class of citizens — the whole of the butchers of the city — of the right to exercise their trade, the business to which they have been trained and on which they depend for the support of themselves and their families; and that the unrestricted exercise of the business of butchering is necessary to the daily subsistence of the population of the city.

But a critical examination of the Act hardly justifies these assertions.

It is true that it grants, for a period of twenty-five years, exclusive privileges. And whether those privileges are at the expense of the community in the sense of a curtailment of any of their fundamental rights, or even in the sense of doing them an injury, is a question open to considerations to be hereafter stated. But it is not true that it deprives the butchers of the right to exercise their trade, or imposes upon them any restriction incompatible with its successful pursuit, or furnishing the people of the city with the necessary daily supply of animal food. . . . .

The power here exercised by the legislature of Louisiana, is, in its essential nature, one which has been, up to the present period in the constitutional history of this country, always conceded to belong to the States, however it may now be questioned in some of its details.

"Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the application of steam-power to propel cars, the building with combustible materials, and the burial of the dead, may all," says Chancellor Kent, 2 Commentaries, 340, "be interdicted by law, in the midst of dense masses of population, on the general and rational principle that every person ought so to use his property as not to injure his neighbors; and that private interests must be made subservient to the general interests of the community." This is called the police power; and it is declared by Chief Justice Shaw, Commonwealth *v.* Alger, 7 Cush. 84, that it is much easier to perceive and realize the existence and sources of it than to mark its boundaries, or prescribe limits to its exercise.

This power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. . . . .

The regulation of the place and manner of conducting the slaughtering of animals, and the business of butchering within a city, and the inspection of the animals to be killed for meat, and of the meat afterwards, are among the most necessary and frequent exercises of this power. . . . .

It cannot be denied that the statute under consideration is aptly framed to remove from the more densely populated part of the city the noxious slaughter-houses, and large and offensive collections of animals necessarily incident to the slaughtering business of a large city, and to locate them where the convenience, health, and comfort of the people require they shall be located. And it must be conceded that the means adopted by the Act for this purpose are appropriate, are stringent, and effectual. . . . .

It can readily be seen that the interested vigilance of the corporation created by the Louisiana legislature will be more efficient in enforcing the limitation prescribed for the stock-landing and slaughtering business for the good of the city than the ordinary efforts of the officers of the law.

Unless therefore, it can be maintained that the exclusive privilege granted by this charter to the corporation is beyond the power of the legislature of Louisiana, there can be no just exception to the validity of the statute. And in this respect we are not able to see that these privileges are especially odious or objectionable. The duty imposed as a consideration for the privilege is well defined and its enforcement well guarded. The prices or charges to be made by the company are limited by the statute, and we are not advised that they are on the whole exorbitant or unjust. . . . .

It may, therefore, be considered as established that the authority of the legislature of Louisiana to pass the present statute is ample, unless some restraint in the exercise of that power be found in the Constitution of that State or in the amendments to the Constitution of the United States, adopted since the date of the decisions we have already cited.

If any such restraint is supposed to exist in the Constitution of the State, the Supreme Court of Louisiana having necessarily passed on that question, it would not be open to review in this court.

The plaintiffs in error accepting this issue, allege that the statute is a violation of the Constitution of the United States in these several particulars:—

That it creates an involuntary servitude forbidden by the thirteenth article of amendment;

That it abridges the privileges and immunities of citizens of the United States;

That it denies to the plaintiffs the equal protection of the laws; and,

That it deprives them of their property without due process of law; contrary to the provisions of the first section of the fourteenth article of amendment.

This court is thus called upon for the first time to give construction to these articles.

. . . . . .

Twelve articles of amendment were added to the federal Constitution soon after the organization of the government under it in 1789. Of these all but the last were adopted so soon afterwards as to justify the statement that they were practically contemporaneous with the adoption of the original; and the twelfth, adopted in 1803, was so nearly so as to have become, like all the others, historical and of another age. But within the last eight years three other articles of amendment have been added by the voice of the people to that now venerable instrument.

The most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning. . . . .

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. . . . .

"1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

"2. Congress shall have power to enforce this article with appropriate legislation."

To withdraw the mind from the contemplation of this grand yet

simple declaration of the personal freedom of all the human race within the jurisdiction of this government — a declaration designed to establish the freedom of four millions of slaves — and with a microscopic search endeavor to find in it a reference to servitudes, which may have been attached to property in certain localities, requires an effort, to say the least of it.

That a personal servitude was meant is proved by the use of the word "involuntary," which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word "servitude" is of larger meaning than slavery, as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was well understood that in the form of apprenticeship for long terms, as it had been practised in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word "slavery" had been used. The case of the apprentice slave, held under the law of Maryland, liberated by Chief Justice Chase, on a writ of *habeas corpus* under this article, illustrates this course of observation. . . . . And it is all that we deem necessary to say on application of that article to the statute of Louisiana, now under consideration. . . . .

The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship — not only citizenship of the United States, but citizenship of the States. . . . .

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction, citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The

phrase "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls, and citizens of foreign States born within the United States.

The next observation is more important in view of the arguments of the counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. . . . .

We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of the citizens of the several States. The argument, however, in favor of the plaintiffs rest wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." . . . .

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have hitherto rested; for they are not embraced by this paragraph of the amendment.

The first occurrence of the words "privileges and immunities" in our constitutional history is to be found in the fourth of the Articles of the old Confederation.

It declares "that the better to secure and perpetuate the mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and

regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."

In the Constitution of the United States which superseded the Articles of Confederation the corresponding provision is found in section two of the fourth article, in the following words: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Articles of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

. . . . . .

The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of the citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercises, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.

It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the federal government for their existence or protection, beyond the very few express limitations which the federal Constitution imposed upon the States — such, for instance, as the prohibition against *ex post facto* laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the federal government. Was it the purpose of the Fourteenth

Amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of the citizens of United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? . . . .

We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them.

Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States as such, and that they are left to the State governments for security and protection, and not by this article placed under the special care of the federal government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no State can abridge until some case involving those privileges may make it necessary to do so. . . . .

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

The argument has not been much pressed in these cases that the defendant's charter deprives the plaintiffs of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the Fifth Amendment, as a restraint upon the federal power. It is also to be found in some form of expression in the constitutions of nearly all the States, as a restraint upon the power of the States. This law, then, has practically been the same as it is now during the existence of the government, except so far as the present amendment may place the restraining power over the States in this matter in the hands of the federal government.

We are not without judicial interpretation, therefore, both state and national, of the meaning of this clause. And it is sufficient to say that under no construction of that provision that we have ever seen, or any that we deem admissible, can the restraint imposed by the State of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision.

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation. We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. But as it is a State that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of State oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands. We find no such case in the one before us, and do not deem it necessary to go over the argument again, as it may have relation to this particular clause of the amendment. . . . .

The judgments of the Supreme Court of Louisiana in these cases are affirmed.

CHISHOLM *vs.* GEORGIA

SUPREME COURT OF THE UNITED STATES, (1793).

[*2 Dall., 419.*]

IN July, 1792, one Alexander Chisholm, a citizen of South Carolina, brought a suit against the State of Georgia for a certain sum of money claimed by him, process being served by the marshall for the District of Georgia on the Governor and the Attorney General of that State. The case came on in the August term, 1772, Randolph, the Attorney General of the United States, acting as counsel for the plaintiff. Georgia did not appear and accordingly Randolph moved "That, unless the State of Georgia shall, after reasonable previous notice of this motion, cause an appearance to be entered in behalf of the said State, on the fourth day of the next term, or shall then show cause to the contrary, judgment shall be entered against the said State, and a writ of enquiry of damage shall be awarded." To avoid any appearance of precipitancy, the court postponed consideration of the motion till February, 1793.

"Meantime the legislature of the defendant State took action. That body saw three reasons why the summons should not be obeyed. If heeded, numberless suits would at once begin for paper money issued from the Treasury to supply the needs of United States troops; the citizens would be vexed by perpetual taxes in addition to those the funding system had so unjustly imposed; but, what was worse than all, the retained sovereignty of the State would be destroyed. It was resolved, therefore, that the second section of the third article of the Constitution gave the Supreme Court no power to force the State to answer any process that might be served out; and that the State would not be bound by any judgment."

On the 5th of February the case was argued for the plaintiff by the Attorney General and on the 18th the court rendered its decision, a majority of the judges agreeing with Chief Justice Jay. His decision in brief was as follows: —

The question we are now to decide has been accurately stated namely, is a State suable by individual citizens of another State?

It is said that Georgia refuses to appear and answer to the plaintiff in this action, because she is a sovereign State, and therefore not liable to such actions. In order to ascertain the merits of this objection, let us inquire:—1st. In what sense Georgia is a sovereign State. 2nd. Whether suability is incompatible with such sovereignty. 3rd. Whether the Constitution, to which Georgia is a party, authorizes such an action against her.

1st. . . . . the sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each State in the people of each State. . . . .

2nd. The second object of inquiry now presents itself, namely, whether suability is compatible with State sovereignty. . . . .

If there be any such incompatibility as is pretended, whence does it arise? In what does it consist? There is at least one strong undeniable fact against this incompatibility, and that is this: Any one State in the Union may sue all the people of another State. It is plain then that a State may be used, and hence it plainly follows that suability and State sovereignty are not incompatible. . . . . But why should it be more incompatible that all the people of a State should be sued by one citizen, than by one hundred thousand, I cannot perceive, the process in both cases being alike, and the consequences of a judgment alike. Nor can I observe any greater inconveniences in the one case than in the other, except what may arise from the feelings of those who may regard a lesser number in an inferior light. But if any reliance be made on this inferiority, as an objection, at least one-half of its force is done away by this fact, namely, that it is conceded that a State may appear in this court as plaintiff against a single citizen as defendant; and the truth is that the State of Georgia is at this moment prosecuting an action in this court against two citizens of South Carolina. . . . .

3rd. Let us now proceed to inquire whether Georgia has not, by being a party to the national compact, consented to be suable by individual citizens of another State. . . . .

The question now before us renders it necessary to pay particular attention to that part of the second section which extends the judicial power "to controversies between a State and citizens for

another State." It is contended that this ought to be construed to reach none of these controversies, excepting those in which a State may be plaintiff. . . . .

If we attend to the records we find them to be express, positive, free from ambiguity, and without room for such implied expressions: "The judicial power of the United States shall extend to controversies between a State and citizens of another State." If the Constitution really meant to extend these powers only to those controversies in which a State might be plaintiff, to the exclusion of those in which citizens had demands against a State, it is inconceivable that it should have attempted to convey that meaning in words not only so incompetent, but also repugnant to it. If it meant to exclude a certain class of these controversies, why were they not expressly excepted; on the contrary, not even an intimation of such intention appears in any part of the Constitution. . . . . When power is thus extended to a controversy, it necessarily, as to all judicial purposes, is also extended to those between whom it exists.

. . . . . .

For the reasons before given, I am clearly of opinion that a State is suable by citizens of another State.

THE COMMONWEALTH OF KENTUCKY *vs.* WILLIAM DENNISON

Supreme Court of the United States (1860).

[24 Howard, 66.]

This is a case arising under Article IV, section 2 of the federal Constitution, which reads: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Acting in virtue of their power to pass legislation for the purpose of carrying out the provisions of the Constitution, Congress, in 1793, passed an act (Statutes-at-Large 302, Sec. 1) regulating the manner in which

this interstate extradition was to be carried out. Section 1 of this act says: " It shall be the duty of the executive authority of the State . . . to which such person shall have fled to cause him or her to be arrested and secured . . . and to cause the fugitive to be delivered to such agent " [of the demanding State].

In 1859 William Largo, a negro, was indicted in Kentucky under a law of that State which made it a crime to assist in the escape of a slave. After the indictment Largo fled into Ohio and upon the application of the executive of Kentucky, Governor Dennison of Ohio refused to return the fugitive. The Commonwealth of Kentucky then applied in the Supreme Court for a writ of mandamus to compel the Governor of Ohio to make the surrender.

Taney, C.J., delivered the opinion of the court. After dismissing the question which had been raised as to the jurisdiction of the Supreme Court as already settled he said in part:

. . . This brings us to the examination of the clause of the Constitution which has given rise to this controversy. . . . Looking to the language of the clause, it is difficult to comprehend how any doubt could have arisen as to its meaning and construction. The words " treason, felony or other crime " in their plain and obvious import as well as in their legal and technical sense embrace every act forbidden and made punishable by a law of the State. The word " crime " of itself includes every offense from the highest to the lowest in the grade of offenses and includes what are called " misdemeanors " as well as treason and felony.

But as the word " crime " would have included treason and felony without specially mentioning those offenses, it seems to be supposed that the natural and legal import of the word, by associating it with those offenses, must be restricted and confined to offenses already known to the common law and to the usage of nations, and regarded as offenses in every civilized community, and that they do not extend to acts made offenses by local statutes growing out of local circumstances, or to offenses against ordinary police regulations. This is one of the grounds upon which the Governor of Ohio refused to deliver Largo, under the advice of the attorney general of that State.

But this inference is founded upon an obvious mistake as to the purposes for which the words " treason and felony " were intro-

duced. They were introduced for the purpose of guarding against any restriction of the word "crime" and to prevent this provision from being construed by the rules and usages of independent nations in compacts for delivering up fugitives from justice. According to these usages, even where they admitted the obligation to deliver the fugitive, persons who fled on account of political offenses were almost always excepted, and the nation upon which the demand is made also uniformly claims and exercises a discretion in weighing the evidence of the crime, and the character of the offense. . . . And the English government, from which we have borrowed our general system of law and jurisprudence, has always refused to deliver up political offenders who had sought an asylum within its dominions. And as the States of this Union, although united as one nation for certain specified purposes are yet so far as concerns their internal government separate sovereignties independent of each other, it was obviously necessary to show by the terms used that this compact was not to be regarded or construed as an ordinary treaty for extradition between nations altogether independent of each other but was intended to embrace political offenses against the sovereignty of the State as well as all other crimes. And as treason was a "felony," it was necessary to insert those words to show, in language that could not be mistaken, that political offenders were included in it. For this was not a compact of peace and comity between separate nations who had no claim on each other for mutual support but a compact binding them to give aid and assistance to each other in executing their laws and to support each other in preserving order and law within its confines whenever such aid was needed and required; for it is manifest that the statesmen who framed the Constitution were fully sensible that from the complex character of the government it must fail unless the States mutually supported each other and the general government; and that nothing would be more likely to disturb its peace and end in discord than permitting an offender against the laws of a State, by passing over a mathematical line which divides it from another, to defy its process and stand ready under the protection of the State to repeat the offense as soon as another opportunity offered.

[The Chief Justice then proceeded to show by reference to his-

tory that this necessity was recognized and acted upon from the colonial period down to the adoption of the present Constitution, and then continued.]

. . . The argument on behalf of the Governor of Ohio, which insists upon excluding from this clause new offenses created by a statute of the State and growing out of its local institutions and which are not admitted to be offenses in the State where the fugitive is found nor so regarded by the general usage of civilized nations, would render the clause useless for any practical purpose. For where can the line of division be drawn with anything like certainty? Who is to mark it? The Governor of the demanding State would probably draw one line and the other State another. And if they differed who is to decide between them? Under such a vague and indefinite construction the article would not be a bond of peace and union but a constant source of controversy and irritating discussion. It would have been far better to omit it altogether and to have left it to the comity of the States and their own sense of their respective interests than to have inserted it as conferring a right and yet defining that right so loosely as to make it a never-failing subject of dispute and ill-will.

[The Chief Justice then pointed out that under the Articles of Confederation it was the practice to address all demands for the return of fugitives to the Governor of the State into which the fugitive had fled and maintained that on account of the similar wording in the Constitution and in the Articles of Confederation it was obviously the intention of the framers to continue this practice.]

As he said: In adopting the same words they manifestly intended to sanction the mode of proceeding practised under the Confederation — that is, of demanding the fugitive from the executive authority and making it his duty to cause him to be delivered up.

Looking therefore to the words of the Constitution — to the obvious policy and necessity of this provision to preserve harmony between States, and order and law within their respective borders, and to its early adoption by the colonies and then by the confederated States whose mutual interest it was to give each other aid and support whenever it was needed — the conclusion is irresistible that this compact engrafted in the Constitution included and was in-

tended to include every offense made punishable by the law of the State in which it was committed, and that it gives the right to the executive authority of the State to demand the fugitive from the executive authority of the State in which he is found; that the right given to "demand" implies that it is an absolute right; and it follows that there must be a correlative obligation to deliver without any reference to the character of the crime charged or to the policy or laws of the State to which the fugitive has fled.

This is evidently the construction put upon this article in the Act of Congress of 1793 under which the proceedings now before us are instituted. It is therefore the construction put upon it almost contemporaneously with the commencement of the government itself and when Washington was still at its head and many of those who had assisted in framing it were members of the Congress which enacted the law.

. . . . . .

This duty of providing by law the regulations necessary to carry this compact into execution, from the nature of the duty and the object in view, was manifestly devolved upon Congress; for if it was left to the States each State might require different proof to authenticate the judicial proceeding upon which the demand was founded; and as the duty of the Governor of the State where the fugitive was found is in such cases merely ministerial without the right to exercise either executive or judicial discretion, he could not lawfully issue a warrant to arrest an individual without a law of the State or of Congress to authorize it.

[The Chief Justice then explained how Congress, moved by the necessity for some action and fortified by the power granted by the Constitution in the clause "Congress may by general laws prescribe the manner in which acts, records and proceedings shall be proved and the effect thereof," proceeded to enact the law referred to in the introduction to this case from which he quoted sections 1 and 2.]

He then proceeded to say: It will be observed that the judicial acts which are necessary to authorize the demand are plainly specified in the act of Congress and the certificate of the executive authority is made conclusive as to their verity when presented to

the executive of the State where the fugitive is found. He has no right to look behind them, or to question them, or to look into the character of the crime specified in this judicial proceeding. The duty which he is to perform is, as we have already said, merely ministerial — that is, to cause the party to be arrested and delivered to the agent or authority of the State where the crime was committed. It is said in the argument that the executive officer upon whom this demand is made must have a discretionary executive power because he must inquire and decide who is the person demanded. But this certainly is not a discretionary duty upon which he is to exercise any judgment but is a mere ministerial duty — that is, to do the act required to be done by him and such as every marshal and sheriff must perform when process either criminal or civil is placed in his hands to be served on the person named in it. And it never has been supposed that this duty involved any discretionary power or made him anything more than a mere ministerial officer; and such is the position and character of the executive of the State under this law when the demand is made upon him and the requisite evidence produced. The Governor has only to issue his warrant to an agent or officer to arrest the party named in the demand.

[The Chief Justice next raised the question whether or not the Supreme Court could by a writ of mandamus force the Governor of a State to give up a fugitive from another State.]

The question which remains to be considered is a grave and important one. When the demand was made, the proofs required by the Act of 1793 to support it were exhibited to the Governor of Ohio, duly certified and authenticated; and the objection made to the validity of the indictment is altogether untenable. Kentucky has an undoubted right to regulate the forms of pleading and process in her own courts in criminal as well as civil cases, and is not bound to conform to those of any other State. And whether the charge against Largo is legally and sufficiently laid in this indictment according to the laws of Kentucky is a judicial question to be decided by the courts of the State and not by the executive authority of the State of Ohio.

The demand being thus made, the act of Congress declares " that it shall be the duty of the executive authority of the State " to cause

the fugitive to be arrested and secured and delivered to the agent of the demanding State. The words "It shall be the duty" in ordinary legislation imply the assertion of the power to command and to coerce obedience. But looking to the subject-matter of this law and the relations which the United States and the several States bear to each other the court is of opinion that the words "It shall be the duty" were not used as mandatory and compulsory but as declaratory of the moral duty which this compact created when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty or inflict any punishment for neglect or refusal on the part of the executive of the State; nor is there any clause or provision in the Constitution which arms the government of the United States with this power. Indeed such a power would place every State under the control and dominion of the general government, even in the administration of its internal concerns and reserved rights. And we think it clear that the federal government under the Constitution has no power to impose on a State officer, as such, any duty whatever and compel him to perform it; for if it possessed this power it might overload the officer with duties which would fill up all his time and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State.

It is true that Congress may authorize a particular State officer to perform a particular duty; but if he declines to do so it does not follow that he may be coerced or punished for his refusal. And we are very far from supposing that in using this word "duty" the statesmen who framed and passed the law, or the President who approved and signed it, intended to exercise a coercive power over the State officers not warranted by the Constitution. But the general government having in that law fulfilled the duty devolved upon it by prescribing the proof and mode of authentication upon which the State authorities were bound to deliver the fugitive, the word "duty" in the law points to the obligation on the State to carry it into execution.

[The Chief Justice then showed how in the earlier days it had been the custom of the States to aid the national government and

how they had been allowed to carry out some federal laws in their courts, notably the revenue laws.]

Resuming he said: But the language of the Act of 1793 is very different. It does not purport to give authority to the State executive to arrest and deliver the fugitive but requires it to be done, and the language of the law implies an absolute obligation which the State authority is bound to perform. And when it speaks of the duty of the Governor it evidently points to the duty imposed by the Constitution in the clause we are now considering. The performance of this duty, however, is left to depend on the fidelity of the State executive to the compact entered into with the other States when they adopted the Constitution of the United States and became members of the Union. It was so left by the Constitution, and necessarily so left by the Act of 1793.

And it would seem that when the Constitution was framed and when this law was passed it was confidently believed that a sense of justice and of mutual interest would insure a faithful execution of this constitutional provision by the executive of every State; for every State had an equal interest in the execution of a compact absolutely essential to their peace and well-being in their internal concerns as well as members of the Union. Hence the use of the words ordinarily employed when an undoubted obligation is required to be performed: "It shall be his duty."

But if the Governor of Ohio refuses to discharge this duty there is no power delegated to the general government either through the judicial department or any other department to use any coercive means to compel him.

And upon this ground the motion for mandamus must be overruled.

DRED SCOTT *vs.* SANDFORD

Supreme Court of the United States (1857).

[*19 Howard, 393.*]

The facts in this case may be briefly stated as follows: Dred Scott was the negro slave of an army surgeon whose home was in Missouri, a slave State. In 1834 his master took him into the free State of Illinois, where he lived for two years. In 1836 he was taken into the territory of Minnesota, which had not been admitted to statehood, but in which slavery had been forbidden by act of Congress. In 1838 he returned with his master to Missouri, and in due time set up the claim that his residence in Illinois and in the Minnesota territory had made him free. The case was carried through one court after another until the Circuit Court of the United States gave judgment in the negro's favor. An appeal on a writ of error came before the Supreme Court in 1857.

Chief Justice Taney delivered the opinion of the Supreme Court.

There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties?

2. If it had jurisdiction, is the judgment it has given erroneous or not? . . .

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, privileges and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution. . . .

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States.

He may have all the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can, by naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the federal government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character. . . .

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body, but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the Constitution and the principles on which it was founded. . . .

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. . . .

In the opinion of the Court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . .

They had for more than a century before been regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. . . .

The legislation of the States therefore shows in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slave-holding States

regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. . . .

To all this mass of proof we have still to add, that Congress has repeatedly legislated upon the same construction of the Constitution that we have given. . . .

The conduct of the executive department of the government has been in perfect harmony upon this subject with this course of legislation. . . .

And upon a full and careful consideration of the subject, the court is of opinion, that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous. . . .

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

In considering this part of the controversy, two questions arise: 1. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2. If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power " to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States "; but, in the judgment of the Court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.

At the time when the territory in question was obtained by cession from France, it contained no population fit to be associated together and admitted as a State; and it therefore was absolutely necessary to hold possession of it, as a territory belonging to the United States, until it was settled and inhabited by a civilized community capable of self-government, and in a condition to be admitted on equal terms with the other States as a member of the Union. But, as we have before said, it was acquired by the general government, as the representative and trustee of the people of the United States, and it must therefore be held in that character for their common and equal benefit; for it was the people of the several States, acting through their agent and representative, the federal government, who in fact acquired the territory in question, and the government holds it for their common use until it shall be associated with the other States as a member of the Union.

But until that time arrives, it is undoubtedly necessary that some government should be established, in order to organize society, and to protect the inhabitants in their persons and property; and as the people of the United States could act in this matter only through the government which represented them, and through which they spoke and acted when the territory was obtained, it was not only within the scope of its powers, but it was its duty to pass such laws and establish such a government as would enable those by whose authority they acted to reap the advantages anticipated from its acquisition, and to gather there a population which would enable it to assume the position to which it was destined among the States of the Union. . . . But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of government. The powers of the government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. . . . Thus the rights of property are united with the rights of person, and placed on the same ground by the Fifth Amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular territory of the United States, and

who had committed no offense against the laws, could hardly be dignified with the name of due process of law. . . .

Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words — too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding or owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory, even if they had been carried there by the owner, with the intention of becoming a permanent resident. . . .

But there is another point in the case which depends upon State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

Our notice of this part of the case will be very brief; for the principle on which it depends was decided in this court, upon much consideration, in the case of Strader *et al. v.* Graham, reported in 10 Howard, 82. In that case, the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their status or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of

Ohio; and that this Court had no jurisdiction to revise the judgment of a State court upon its own laws. . . .

So in this case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status as free or slave depended on the laws of Missouri, and not of Illinois. . . .

Upon the whole, therefore, it is the judgment of this Court, that it appears by the record before us, that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

In dissenting from the decision of the Court, Mr. Justice Curtis said in part: . . . One mode of approaching this question is, to inquire who were citizens of the United States at the time of the adoption of the Constitution.

Citizens of the United States at the time of the adoption of the Constitution can have been no other than the citizens of the United States under the Confederation. . . .

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free, native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens. . . .

I can find nothing in the Constitution which, *proprio vigore*, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be

native-born citizens of any State after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its constitution or laws, is also a citizen of the United States. . . .

The Constitution having recognized the rule that persons born within the several States are citizens of the United States, one of four things must be true:

First. That the Constitution itself has described what native-born persons shall or shall not be citizens of the United States; or,

Second. That it has empowered Congress to do so; or,

Third. That all free persons, born within the several States, are citizens of the United States; or,

Fourth. That it is left to each State to determine what free persons, born within its limits, shall be citizens of such State, and thereby be citizens of the United States. . . .

The conclusions at which I have arrived on this part of the case are:

First. That the free native-born citizens of each State are citizens of the United States.

Second. That as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States.

Third. That every such citizen, residing in any State, has the right to sue and is liable to be sued in the federal courts, as a citizen of that State in which he resides.

Fourth. That as the plea to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent, and his ancestors were sold as slaves, and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the Circuit Court overruling it was correct.

I dissent, therefore, from that part of the opinion of the majority of the Court, in which it is held that a person of African descent cannot be a citizen of the United States.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. — All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. — The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State

of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantation one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. — The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4. — The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. — Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. — The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the

same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. — The Congress shall have power to lay and collect

taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise

like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section 9. — The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section 10. — No State shall enter into any treaty, alliance, or Confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver

coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligations of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

Article II.

Section 1. — The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows: —

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall

be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: —

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2. — The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. — He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. — The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III.

Section 1. — The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. — The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. — Treason against the United States shall consist only in levying war against them, or in adhering to their ene-

mies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV.

Section 1. — Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. — New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State

in this Union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS.

ARTICLES in addition to and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States, pursuant to the fifth article of the original Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of council for his defence.

Article VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Article XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Article XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve

upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.

Section 1.— Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. — Congress shall have power to enforce this article by appropriate legislation.

Article XIV.

Section 1. — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. — Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and

judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. — No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by vote of two-thirds of each house remove such disability.

Section 4. — The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. — The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV.

Section 1. — The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. — The Congress shall have power to enforce this article by appropriate legislation.